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Tuesday
November 6, 1979

Highlights

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Highlights

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 80-2 of October 23, 1979

Determination Under Section 402(c)(2)(A) of the Trade Act of 1974—People's Republic of China

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978) ("the Act"), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to the People's Republic of China will substantially promote the objectives of section 402.

On my behalf, please transmit this determination to the Speaker of the House of Representatives and the President of the Senate.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, October 23, 1979.

[FR Doc. 79-34450
Filed 11-2-79; 4:46 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 80–3 of October 23, 1979

Determination Under Section 405(a) of the Trade Act of 1974—People's Republic of China

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978) ("the Act"), I determine, pursuant to section 405(a) of the Act, that the Agreement on Trade Relations between the United States of America and the People's Republic of China will promote the purposes of the Act and is in the national interest.

On my behalf, please transmit this determination to the Speaker of the House of Representatives and the President of the Senate.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, October 23, 1979.

[FR Doc. 79-34451
Filed 11-2-79; 4:47 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 44, No. 216
Tuesday, November 6, 1979

NATIONAL COMMISSION ON SOCIAL SECURITY

1 CFR Part 485

Privacy Act of 1974; Public Access Regulations

AGENCY: National Commission on Social Security.

ACTION: Final rule.

SUMMARY: On June 26, 1979, there was published in the Federal Register vol. 44 No. 124 page 37231 a notive of public access regulations pursuant to the provisions of the Privacy Act of 1974, Public Law 930579 (5 U.S.C. 552a). The public was given the opportunity to submit, not later than July 26, 1979, written comments concerning the proposed system of records. No comments were received.

The proposed public access regulations are hereby adopted.

EFFECTIVE DATE: November 6, 1979.

FOR FURTHER INFORMATION CONTACT: Laura Kreuzer, Adminstrative Officer (202) 376-2622.

Dated at Washington, D.C., on October 26, 1979.

Francis J. Crowley,

Executive Director.

1 CFR is amended by adding the following new Part 485 to read as follows:

PART 485—PRIVACY ACT IMPLEMENTATION

Authority: 5 U.S.C. 552a: Pub. L. 93-579.

§ 485.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the National Commission on Social Security, hereafter known as the Commission, maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 485.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number.

(d) The term "system of records" means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 485.3 Procedures for requests pertaining to individual records in a records system.

An individual shall submit a request to the Administrative Officer to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Executive Director of the Commission which states the individual's desire to review his or her record.

§ 485.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Administrative Officer of the Commission pursuant to Section 485.3 shall present the request at the Commission offices, 440 G Street, N.W., Washington, D.C., 20218, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Commission's offices with a form of identification which will permit the Commission to verify that the individual is the same individual as contained in the record requested.

§ 485.5 Access to requested information to the individual.

Upon verification of identity the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 485.6 Request for correction or amendment to the record.

The individual should submit a request to the Administrative Officer which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with provisions of § 485.4 of this Part.

§ 485.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Administrative Officer will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, and the procedures established by the

Commission for the individual to request a review of that refusal.

§ 485.8 Appeal of an initial adverse agency determination on correction of amendment of the record.

An individual who disagrees with the refusal of the Administrative Officer to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Director, National Commission on Social Security, 440 G Street, N.W., Washington, D.C. 20218. The Executive Director will not later than thirty working days from the date on which the individual request such review, complete such review and make a final determination unless, for good cause shown, the Executive Director extends such thirty day period. If, after his or her review, the Executive Director also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Executive Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 485.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notices of its system of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 485.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc. 79-34300 Filed 11-5-79; 8:45 am]
BILLING CODE 6820-AC-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Civil Aeronautics Board

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: One purpose of this amendment is to except the following positions under Schedule C: one position of Secretary (Steno) to the Director, Bureau of Consumer Protection; one position of Community Relations Representative; and one position of Community Relations Specialist. The other purpose of this amendment is to change the title of the position, Senior Community Relations Officer, to Community Relations Representative because the new title more accurately describes the duties of the position. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: Secretary (Steno)—August 6, 1979; Community Relations Representative (title change)—August 9, 1979; Community Relations Representative and Community Relations Specialist—August 10, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Richard Calio, Civil Aeronautics Board, 673-5507.

Office of Personnel Management
Beverly M. Jones,
Issuance System Manager.

Accordingly, 5 CFR 213.3340 (h) and (j) are amended as set out below:

§ 213.3340 Civil Aeronautics Board.

* * * * *

(h) One Writer, one Deputy Director, five Community Relations Representatives, and one Community Relations Specialist, Office of Community and Congressional Relations.

* * * * *

(j) One Program Analysis Officer and one Secretary (Steno) to the Director, Bureau of Consumer Protection.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)
[FR Doc. 79-34259 Filed 11-5-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Export-Import Bank of the United States

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Personal and Confidential Assistant to the First Vice President and Vice-Chairman of the Bank because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: May 22, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Adrian Wainwright, Export-Import Bank of the U.S. 566-8834.

Office of Personnel Management
Beverly M. Jones,
Issuance System Manager.

Accordingly, 5 CFR 213.3342(b) is amended as set out below:

§ 213.3342 Export-Import Bank of the U.S.

* * * * *

(b) One Private Secretary, one Special Assistant, Systems Analysis, and one Personal and Confidential Assistant to the First Vice-President.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)
[FR Doc. 79-34260 Filed 11-5-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Federal Communications Commission

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Congressional Liaison Specialist to the Chairman because it is confidential in nature. Appointments may be made to the position without examination by the Office of Personnel Management.

EFFECTIVE DATE: May 2, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.
On position content: Evelyn McPherson, Federal Communications Commission, 632-7106.

Office of Personnel Management
Beverly M. Jones,
Issuance System Manager.

Accordingly, 5 CFR 213.3338(e) is added as set our below:

§ 213.3338 Federal Communications Commission.

* * * * *

(e) One Congressional Liaison Specialist to the Chairman.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)
[FR Doc. 79-34261 Filed 11-5-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Federal Deposit Insurance Corporation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Special Assistant for Public Information because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 2, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.
On position content: James Laurilla, Federal Deposit Insurance Corporation, 389–4301.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3333(f) is added as set out below:

§ 213.3333 Federal Deposit Insurance Corporation

* * * * *

(f) One Special Assistant for Public Information.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34262 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

Excepted Service; Federal Home Loan Bank Board

5 CFR Part 213

AGENCY: Office of Personnel Mangement.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Secretary to the Deputy Counsel because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.
On position content: Patricia Shambach, Federal Home Loan Bank Board, 377–6054.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3354(b) is added as set out below:

§ 213.3354 Federal Home Loan Bank Board.

* * * * *

(b) One Secretary to the Deputy General Counsel.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34263 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR 213

Excepted Service; General Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Confidential Assistant to the Controller-Director of Administration because it is confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.
On position content: Wally Neas, General Services Administration, 566–1207.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3337(a)(8) is added as set out below:

§ 213.3337 General Services Administration.

(a) *Office of the Administrator.* * * *

(8) One Confidential Assistant to the Controller-Director of Administration.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34264 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; General Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Confidential Assistant to the Director, Federal Preparedness Agency because it is confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: May 4, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.
On position content: Wally Neas, General Services Administration, 566–1207.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3337(e)(1) is amended as set out below:

§ 213.3337 General Services Administration.

* * * * *

(e) *Federal Preparedness Agency.* (1) Three Confidential Assistants to the Director.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34265 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; General Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Confidential Assistant to the Inspector General because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: April 25, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.
On position content: Wally Neas, General Services Administration, 566–1207.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3337(g)(1) is added as set out below:

§ 213.3337 General Services Administration.

* * * * *

(g) *Office of the Inspector General.* (1) One Confidential Assistant to the Inspector General.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34266 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; National Aeronautics and Space Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Secretary (Steno) to the Administrator because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: July 10, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Elaine Schwartz, National Aeronautics and Space Administration, 755-3546.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3348(a) is amended as set out below:

§ 213.3348 National Aeronautics and Space Administration.

(a) One Secretary (Steno) and one Secretary to the Administrator.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

[FR Doc. 79-34267 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Small Business Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Legislative Affairs Specialist because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: July 24, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Mary Ann Hupp, Small Business Administration, 653-6567.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3332(i) is added as set out below:

§ 213.3332 Small Business Administration.

* * * * *

(i) One Legislative Affairs Specialist.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

[FR Doc. 79-34270 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Small Business Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Special Assistant to the Assistant Administrator for Public Communication because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Clifton Toulson, Small Business Administration, 653-6516.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3332(j) is amended as set out below:

§ 213.3332 Small Business Administration.

* * * * *

(j) Two Special Assistants to the Assistant Administrator for Public Communication.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

[FR Doc. 79-34271 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Small Business Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Special Assistant and one Confidential Assistant to the Associate Deputy Administrator for Support Services because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: Special Assistant—June 8, 1979; Confidential Assistant—June 19, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Diane Jenkins, Small Business Administration, 653-6504.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3332(o) is added as set out below:

§ 213.3332 Small Business Administration.

* * * * *

(o) One Special Assistant and one Confidential Assistant to the Associate Deputy Administrator for Support Services.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

[FR Doc. 79-34272 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Small Business Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts from the competitive service under Schedule C one Confidential Assistant and Secretary to the Inspector General and one Confidential Assistant to the Administrator of the Small Business Administration because they are confidential in nature and (2) changes the title of a position from Special Assistant to the Deputy Administrator to Special Assistant to the Administrator to reflect an organizational redesignation. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: Confidential Assistant and Secretary—May 29, 1979; Special Assistant—June 4, 1979; Confidential Assistant—June 5, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632-4533.
On position content: Diane Jenkins, Small Business Administration, 653-6504.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3332(d) is added and (c), (t) and (y) are amended as set out below:

§ 213.3332 Small Business Administration.

* * * * *

(c) Two Confidential Assistants to the Administrator.

* * * * *

(t) Three Special Assistants to the Deputy Administrator.

* * * * *

(y) Two Special Assistants to the Administrator.

* * * * *

(d) One Confidential Assistant and Secretary to the Inspector General.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34289 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Small Business Administration

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: In response to a request from the Small Business Administration temporary positions in SBA established to make and administer disaster loans in areas which have been declared disaster areas by the President, the Secretary of Agriculture, or SBA have been excepted under Schedule A because it is impracticable to examine for them.

EFFECTIVE DATE: August 6, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.

On position content: Charlene Alexander, Small Business Administration, 202–653–6608.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

SUPPLEMENTARY INFORMATION: No one may serve under this authority for more than an aggregate of 2 years without having a break in service of at least 6 months. Positions excepted under this authority supplement similar positions already excepted under Schedule A 5 (CFR 213.3132(a)) with a total service limit of 4 years. To ensure that positions filled under Schedule A are of an occasional or project nature, the new authority requires that anyone who has completed more than 2 years of service under 5 CFR 213.3132(a) must have a break in service of at least 8 months before being appointed under the new authority; and 5 CFR 213.3132(a) contains specific prohibition against its use to extend the 2-year limit of the new authority. Pursuant to section 533 (d)(3) of title 5, U.S.C., the Director has found that good cause exists for making this regulation effective in less than 60 days in order to enable the agency to reemploy experienced disaster loan personnel should a disaster occur within 60 days.

Accordingly, 5 CFR 213.3132(a) is revised and 213.3132(b) is added, to read as follows:

§ 213.3132 Small Business Administration.

(a) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) above must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34288 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service: Smithsonian Institution

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: All positions located in Panama supporting the Smithsonian Tropical Research Institute are excepted from the competitive service under Schedule A because it is impracticable to examine for them.

EFFECTIVE DATE: December 30, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.

On position content: Tony Kohlrus, Smithsonian Institution, 202–381–5592.

SUPPLEMENTARY INFORMATION: The Panama Canal Act of 1979, Public Law 96–70 permits the Smithsonian Institution to elect coverage under all, any, or no parts of the Panama Canal Employment System for its positions supporting the Smithsonian Tropical Research Institute located in Panama. The agency has elected to use no part of the Panama Canal Employment System. In accordance with the provisions of Public Law 96–70, this Schedule A authority will become effective upon implementation of the Panama Canal Employment System, scheduled for December 30, 1979.

Office of Personnel Management.

Beverly M. Jones

Issuance System Manager.

Accordingly, 5 CFR 213.3174(b) is added to read as follows:

§ 213.3174 Smithsonian Institution

* * * * *

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

[FR Doc. 79-34273 Filed 11-5-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amdt. No. 155]

Certification of Eligible Households; Food Stamp Program—Standard Deductions: Forty-eight States and the District of Columbia, Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands; Thrifty Food Plan Amounts: Forty-eight States and the District of Columbia, Alaska, Hawaii, and Puerto Rico

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment: (1) Revises the standard deduction for the 48 States and the District of Columbia appearing in § 273.9(d)(1) of the Food Stamp Program Regulations issued pursuant to

the Food Stamp Act of 1977, as amended, as well as the standard deductions applicable in Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands appearing in Appendix B to § 273.9; and (2) revises Appendix A of § 273.10 of the Food Stamp Program Regulations to update the Thrifty Food Plan amounts for the 48 States and the District of Columbia, Alaska, Hawaii, and Puerto Rico. The Thrifty Food Plan amounts for the Virgin Islands, and Guam will be published shortly as an additional appendix.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Claire Lipsman, Director of the Program Development Division, Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. Phone—(202)447-8325.

SUPPLEMENTARY INFORMATION: The Food Stamp Act of 1977, as amended, and its implementing regulations (43 FR 47846 et al.) require semi-annual adjustments to the Thrifty Food Plan and the standard deductions for the 48 States and the District of Columbia and the outlying areas. Appendix A of § 273.10 of the program regulations contains only the Thrifty Food Plan amounts by household size for the 48 States and the District of Columbia, Alaska, Hawaii, and Puerto Rico rather than complete allotment tables. To determine the benefits eligible households are to receive without using tables it is necessary to multiply the household's net monthly income by 30 percent and round by dropping all cents and to subtract that amount from the Thrifty Food Plan for that size household. The Department prepares tables for households with up to 8 persons and provides them to State agencies.

The Food Stamp Act of 1977, as amended, requires that the semi-annual adjustments in the Thrifty Food Plan reflect food price changes published by the Bureau of Labor Statistics. The Consumer Price Index (CPI) which is used in the 48 States, the District of Columbia, Alaska, and Hawaii, to make these adjustments in the coupon allotments is the CPI for Urban Wage Earners and Clerical Workers. Food prices for Puerto Rico are obtained monthly from the pricing system under the Government of the Commonwealth of Puerto Rico. The cost of the Thrifty Food Plan is adjusted to reflect the cost of food in Puerto Rico. While the Puerto Rican Thrifty Food Plan amount is currently less than the United States, the Act mandates that the Puerto Rican Thrifty Food Plan amount can never exceed the amount of the fifty States and the District of Columbia.

Because the Thrifty Food Plan for Alaska has not included data for any population center other than Anchorage, the Department has been concerned that some adjustment was needed. Therefore, an interim formula has been developed to adjust the Thrifty Food Plan to reflect higher food prices in cities and towns outside of Anchorage. To make this change, the Department used food price data collected by the University of Alaska in September 1977 for cities and towns throughout the State. The food prices in each city or town were then aggregated into an index number reflecting the cost in each locality of a market basket of food. This figure was used to approximate the Thrifty Food Plan for a family of four. A weighted average of the index numbers for all localities was then computed. The index numbers were then weighted according to local food stamp caseloads as of June 1979. The weighted average was 9.3 percent higher than the index number for Anchorage alone. Therefore, it was concluded that the adjusted Thrifty Food Plan amount for Alaska should include a 9.3 percent increase over the amount which would have been derived using the old method (which considered only food prices in Anchorage). The Department is continuing to study this issue with the goal of establishing Thrifty Food Plan amounts which are more indicative of food prices experienced by Food Stamp Program participants in communities throughout Alaska.

Standard Deductions—48 States and the District of Columbia, Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that a standard deduction shall be used in computing household income. Such standard deduction shall be adjusted every July 1 and January 1 to the nearest $5 for the 6 months ending the preceding March 31 and September 30, respectively, to reflect changes in the Consumer Price Index (CPI) for items other than food. In accordance with this law, the Department has determined that effective January 1, 1980, the standard deduction for the 48 States and the District of Columbia will be $75. Also, in accordance with the Food Stamp Act of 1977, as amended, the Department has determined that effective January 1, 1980, the standard deductions for the outlying areas appearing in Appendix B of § 273.9, of the Food Stamp Program Regulations will be $130 in Alaska, $110 in Hawaii, $150 in Guam, $45 in Puerto Rico, and $65 in the Virgin Islands.

Thrifty Food Plan—48 States and the District of Columbia, Alaska, Hawaii, and Puerto Rico

Section 3(o) of the Food Stamp Act of 1977, as amended, requires that the Thrifty Food Plan shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall: (1) Make household size adjustments taking into account economies of scale; (2) make cost adjustments in the Thrifty Food Plan for Alaska and Hawaii to reflect the cost of food in those States; (3) make cost adjustments in the separate Thrifty Food Plans for Guam, Puerto Rico, and the Virgin Islands of the United States to reflect the cost of food in those States, but not to exceed the cost of food in the fifty States and the District of Columbia; and (4) adjust the cost of such diet every January 1 and July 1 to the nearest dollar increment to reflect changes in the cost of the Thrifty Food Plan for the six months ending the preceding September 30 and March 31, respectively. Under this provision an adjustment in the cost of the Thrifty Food Plan amounts by household size for the 48 States and the District of Columbia, Alaska, Hawaii, and Puerto Rico appearing in Appendix A of § 273.10 of the Food Stamp Program Regulations issued pursuant to the Food Stamp Act of 1977, as amended, has been made.

Accordingly, 7 CFR, Part 273 is revised as follows:

(1) Paragraph 273.9(d)(1) is revised to read as follows:

§ 237.9 Income and deductions.

* * * * *

(d) * * *

(1) *Standard deduction.* A standard deduction of $75 per household per month for the 48 contiguous States and the District of Columbia. * * *

* * * * *

(2) Appendix B to § 273.9 is revised as follows:

Appendix B.—*Standard Deductions for the Outlying Areas*

Outlying areas	Previous unrounded standard deduction (July-December 1979)	Unrounded standard deduction (January-June 1980)	Rounded standard January-June 1980) reduction
Alaska	$119.59	$129.04	$130
Hawaii	99.99	107.89	110
Guam	139.17	150.16	150
Puerto Rico	41.89	45.20	45
Virgin Islands	59.45	64.15	65

[1] CPI adjustment for the period of March 1979 to September 1979 is 1.0790.

(3) Appendix A to § 273.10 is revised as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

APPENDIX A.—*Thrifty Food Plan—48 States and the District of Columbia, Alaska, Hawaii, and Puerto Rico.*

Benefit Determination. To determine the monthly allotment to be issued to households:

(1) Multiply the household's net monthly income by 30 percent and round by dropping all cents.

(2) Subtract the result obtained in Step 1 from the Thrifty Food Plan amount shown below for that size household for the appropriate area involved. (All one and two-person households shall receive a minimum monthly allotment of $10.00):

Thrifty Food Plan Amounts.—*September 1979*

Household Size	48 States[a] and District of Columbia	Alaska[b]	Hawaii[c]	Puerto Rico[d]
1	$63	$98	$86	$60
2	115	180	158	111
3	165	258	226	158
4	209	327	287	201
5	248	388	341	239
6	298	466	409	286
7	329	515	452	317
8	376	589	517	362
Each additional member	+47	+74	+65	+45

[a] Adjusted to reflect the cost of food in September and adjusted for each household size in accordance with economies of scale.

[b] Adjusted to reflect cost of food in this State based on September food price data increased by 9.3 percent to account for higher food prices in cities and towns outside of Anchorage.

[c] Adjusted to reflect cost of food in this State based on September food price data.

[d] Adjusted to reflect cost of food in this area based on September food price data, but not to exceed cost of food in the 50 States and the District of Columbia.

* * * * *

(991 Stat. 958 (U.S.C. 2011–2027)).

Note.—This proposal has been reviewed under the USDA criteria established to implement, Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified as significant. Robert Greenstein, Admininstrator of the Food and Nutrition Service has determined that an emergency situation exists and that it is in public interest to publish this amendment as a final rule. An impact statement has been prepared and is available from Claire Lipsman, Director, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamp.)

Dated: November 2, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79-34360 Filed 11-5-79; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A—REA Bulletins to provide for a revision of REA Bulletin 384–3 to (1) announce a change in Addendum No. 1 (7–78) to REA Form 525, Central Office Equipment Contract (Including Installation). The change will provide that liquidated damages shall be the exclusive measure of damages for failure by the bidder to have effected the completion of installation within the time agreed upon in the contract. The present contract and Addendum No. 1 permit the cumulation of remedies, thereby implying that it is possible to obtain more than just liquidated damages for failure to complete the installation on time. This change in Addendum No. 1 is being made to eliminate this possibility and make liquidated damages the sole measure of damages for failure to complete the installation on time, (2) prescribe a method of handling situations where the delivery of special features extend beyond the specified completion date in the contract, and (3) make the use of Addendum No. 1 optional in the purchase of additional equipment.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Maynard S. Knapp, telephone number (202) 447–5773.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.). A Notice of Proposed Rulemaking was published in the Federal Register on April 17, 1979, Vol. 44, No. 75. As a result of this notice, comments were received from three manufacturers. Those comments, being of similar nature, requested clarification as to when liquidated damages would cease to be assessed after a contractor is in default. Addendum No. 1 to Form 525 was revised to provide for assessment of liquidated damages for each and every day that completion of such installation is delayed beyond the specified time, so long as the subject Central Office, Feature, or Service shall not have been placed in service.

This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355–S, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: October 26, 1979.

Robert W. Feragen,

Administrator.

[FR Doc. 79-34226 Filed 11-5-79; 8:45 am]

BILLING CODE 3410-15-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-16300]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its Rules of Organization to delegate to the Director of the Division of Market Regulation authority to approve record destruction plans and amendments thereto. The Commission believes that it would facilitate timely review and approval of the record destruction plans and amendments thereto if authority to approve such plans and amendments were delegated to the Director of the Division of Market Regulation.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Nancy H. Wojtas, Esq., Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272–2840.

SUPPLEMENTARY INFORMATION: Securities Exchange Act Rule 17a–1 [17 CFR 240.17a–1] requires that every national securities exchange ("exchange") and national securities association ("association") keep for five years all documents and records made or received by it in the course of its business and in the conduct of its self-regulatory activities. Securities Exchange Act Rule 17a–6 [17 CFR 240.17a–6] provides that an exchange or association may destroy or convert to another recording medium such records or documents before the end of the five year retention period if provided for by such exchange or association in a record destruction plan filed with and approved by the Commission. The

Commission believes that it would facilitate timely review and approval of the record destruction plans and any amendment thereto if authority to approve such plans and amendments were delegated to the Director of the Division of Market Regulation. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), hereby amends § 200.30-3 (17 CFR 200.30-3) of the Commission's rules relating to general organization by adding a new paragraph (a)(33) to delegate to the Director of the Division of Regulation authority to approve record destruction plans and amendments thereto filed pursuant to Rule 17a-6.

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(d) of the Administrative Procedure Act, that the foregoing action relates solely to agency organization, procedure, or practice and that notice and public procedures in accordance with 5 U.S.C. 553 are not necessary pursuant to subsection (b) thereof and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

Part 200 of Title 17 of the Code of Federal Regulations is amended by adding paragraph (a)(33) to § 200.30-3, as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(33) Pursuant to Rule 17a-6 (§ 240.17a-6 of this chapter) to approve record destruction plans and amendments thereto filed by a national securities exchange or a national securities association. Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2).

* * * * *

By the Commission.

George A. Fitzsimmons,

Secretary.

October 26, 1979.

[FR Doc. 79-34244 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 230

[Releases Nos. 33-6140 and 34-16299, IC-10915]

Mutual Fund Sales Literature Interpretive Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a rule concerning the use of false and misleading investment company sales literature. The rule is interpretive in nature and is intended to provide guidance about types of representations which the Commission's experience suggests are most likely to be misleading.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Anthony A. Vertuno, (202) 272-2107 or Sarah B. Ackerson, (202) 272-2057, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On March 8, 1979, the Commission issued Securities Act Release No. 6034 (44 FR 16935 (March 20, 1979)) in which it announced the withdrawal of its Statement of Policy on investment company sales literature ("Statement") and requested public comment on the proposed adoption of Rule 156 (17 CFR 230.156), an interpretive rule concerning the use of false or misleading investment company sales literature.

In its release the Commission stated that proposed Rule 156 was an interpretive rule intended to highlight general areas which, based on the Commission's regulatory experience with investment company sales literature, had proven to be particularly susceptible to misleading statements. The Commission stated that the proposed rule was not a legislative rule designed to prescribe law or policy and emphasized that the rule's general prohibition against the use of misleading sales literature merely reiterated pertinent statutory provisions of the federal securities laws applicable to sales literature. The Commission also announced at that time that it was implementing a policy under which: (1) The Commission staff would not normally give detailed interpretive advice on sales literature prior to use; (2) the staff would make systematic spot checks of sales literature filed with the Commission, augmented by more detailed reviews of sales literature during investment company inspections; and (3) staff advisory views on issues of particular regulatory significance that pertain to sales literature would be published in interpretive releases as the need arose.

The Commission has considered the comments received and has made some modifications in the proposed language of Rule 156 which clarify the rule's provisions. The Commission believes that adoption of proposed Rule 156, as revised, will assist the investment company industry in the development and use of sales literature which is neither fraudulent nor misleading yet limit the extent to which government regulations intrude on investment company marketing decisions.

Comments Received

In response to the Commission's request for comments on proposed Rule 156, ten letters were received. The commentators were unanimous in their support for the Commission's decision to withdraw the Statement and several expressed support for the Commission's efforts to reduce direct regulatory involvement in the development of sales literature.[1]

Seven of the letters generally supported the rule, although two suggested specific changes and several raised collateral issues. One letter proposed a revised version of the rule. Another letter opposed application of the rule to closed-end investment companies. Finally, one letter opposed the concept of a rule, favoring one or more interpretive releases instead.

General Anti-Fraud Provision

Paragraph (a) of the proposed rule restates the general statutory anti-fraud prohibitions against using sales literature that is materially misleading in connection with the offer or sale of securities issued by an investment company and provides a general definition of the term "materially misleading." One commentator thought this subsection of the proposed rule was unnecessary because it added nothing to the existing statutory requirements, and two commentators expressed concern over the legal status of the proposed rule. Another commentator objected to the rule applying to "any person" offering or selling securities, noting that the Statement had applied just to issuers, underwriters and dealers.

Since the rule interprets the general anti-fraud provisions of the securities laws, the Commission believes that including a restatement of the statutory prohibitions against use of misleading sales literature is a useful way of establishing the context in which the rule's substantive provisions should be considered. However, as we stated in the release announcing the proposed adoption of Rule 156, the language of subsection (a) does not supplement or

[1] One commentator questioned whether the Statement had in fact been withdrawn. The withdrawal of the Statement was accomplished and, the Commission believes, clearly announced in Securities Act Release 6034.

alter any existing applicable legal standards. To ensure that this purpose of the rule is as clear as possible, the introductory portion of paragraph (a) of the rule has been revised to make clear that any unlawful acts referred to in the rule are made unlawful by existing anti-fraud provisions of the Federal securities laws and rules thereunder. As for the fact that the rule applies to any person who offers or sells securities, it should be kept in mind that Rule 156 is intended to restate and interpret statutory provisions; it is not a revision of the Statement which has been withdrawn. In the absence of any showing that the rule should apply less broadly than the statutory provisions it interprets, the Commission believes it is appropriate that the rule parallel the statutory language of the anti-fraud provisions which extends to any person who uses sales literature to sell securities.

Problem Areas

Paragraph (b) of the proposed rule explains that a determination of what is or is not misleading will depend on the context in which a statement is made and lists particular factors which could be among those considered in making such a determination. Two commentators argued that the rule is too specific and would tend to become comprehensive and mandatory like the Statement. Conversely, these commentators felt that the rule did not provide sufficient guidance for future conduct.

Several commentators offered specific suggestions. One wanted an exclusion for closed-end investment companies. Another commentator requested a provision expressly permitting factual statements on subject areas other than those listed in paragraph (b). A third commentator argued that the proposed rule should expressly prohibit representations that investment company shares are similar to or as safe as a savings account. Finally, one commentator asked that paragraph (b)(2)(i) be modified to caution against the use of statements which "convey" rather than "tend to convey" an impression of net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances.

As the Commission stated in the release inviting comment on proposed Rule 156, the rule is intended to give guidance but not to provide authoritative standards for the investment company industry. In this respect, the rule is intended to be used differently than the Statement, which included provisions relating to specific language and format. Thus, the rule neither prohibits specific representations nor explicitly permits others. The Commission is confident that the broad language of the proposed rule will not evolve into a rigid set of standards so long as specific requirements or prohibitions are not incorporated into the rule.

Where it appears appropriate in the future to provide more definitive guidance with respect to particular matters, the Commission can do so by other means. For example, it has been suggested that such guidance might be appropriate with respect to the advertising of money market yield figures, and the Commission is considering whether it should undertake to provide guidance in this area. The Commission anticipates, however, that any specific standards which might be proposed in the future with respect to money market fund yields or other matters will be limited to only those areas where the more general guidance provided in Rule 156 is not sufficient.

The objection to the inclusion of closed-end companies in the rule is based on the commentator's contention that the Statement did not apply to closed-end companies and the fact that closed-end companies are excluded from the filing requirements of Section 24(b) (15 U.S.C. 80a-24(b)) of the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-1-80a-53).[2] With respect to the first basis mentioned, the perception of the commentator, apparently based on the fact that most of the issues arising under the Statement involved sales literature of open-end companies, is erroneous; the Statement was, by its terms, applicable to closed-end as well as open-end companies. With respect to the second, the exclusion of closed-end companies from the filing requirement does not affect the applicability of the anti-fraud statutes to the sales literature of closed-end companies.

The Commission has revised paragraph (b)(2)(i) by replacing the phrase "tend to convey" with the word "convey" in order to be more precise.

Definition of Sales Literature

Paragraph (c) of the rule defines the term "sales literature" as including any communication used by any person to offer to sell or to induce the purchase of investment company securities including communications between issuers, underwriters and dealers—so called "dealer only" materials—which might be passed on to investors. One commentator asked that shareholder reports of closed-end investment companies be excluded from the definition of sales literature because the application of the rule would undermine the "free writing doctrine" applicable to such reports.

Two commentators objected to the inclusion of "dealer-only" communication in the proposed rule's definition of sales literature and asked that "dealer-only" material be treated as sales literature only when it was actually given to investors or intended for use in the sale of securities. One of these commentators also was concerned that requiring a determination whether such material could "reasonably" be "expected" to be communicated to prospective investors imposed an additional burden on the investment company industry. This commentator suggested a revision of the paragraph to eliminate any ambiguity over whether the phrase "can be reasonably expected to be communicated to prospective investors."

The Commission does not believe there is any basis under the "free writing doctrine" for excluding shareholder reports of closed-end companies if they are, in fact, sales literature (i.e., communications used to offer to sell or induce the sale of securities of an investment company) because that doctrine is applicable only to reports which are not used in connection with the offer or sale of securities. In addition, Section 30(d) of the 1940 Act (15 U.S.C. 80a-29(d)) requires semi-annual reports to shareholders and provides that these reports shall not be materially misleading whether used as sales literature or not. Nor does the Commission see any reason to exclude so-called "dealer-only" material if it is reasonable to expect the information contained therein to be imparted to shareholders. The only "burden" such a change would alleviate would be that of avoiding the use of misleading statements. The suggested clarifying revision described at the end of the previous paragraph has been adopted.

Collateral Issues

The National Association of Securities Dealers was concerned that the discontinuance of interpretive opinions from the Commission staff could frustrate self-regulation by the industry. The Commission intends to continue working closely with self-regulatory groups to provide them with whatever formal or informal assistance is

[2] Section 24(b) requires the filing with the Commission within ten days of use of "any advertisement, pamphlet, circular, form letter, or other sales literature" used by all types of investment companies except closed-end companies.

appropriate. The Commission also has under study a proposal made by this commentator that the Commission use its exemptive authority under Section 6(c) of the 1940 Act (15 U.S.C. 80a-6(c)) to relieve from the filing requirements of Section 24(b) of the 1940 Act (15 U.S.C. 80a-24(b)) those companies who meet the sales literature filing requirements of a self-regulatory organization.

Several commentators chose to comment on regulation of sales literature by rules other than proposed Rule 156. One commentator asked that the Commission reconsider the restrictions presently placed on tombstone advertisements and prospectuses. Another took the opportunity to comment at length on regulatory provisions of rule 134 (17 CFR 230 134) which purportedly restrict banks from being competitive with investment companies. These regulatory concerns, which are not related directly to Rule 156, need not be addressed here. While such comments on collateral issues will be considered, insofar as practicable, in a more appropriate context, commentators are encouraged to resubmit their views as the Commission invites comments on subjects to which they are more directly related.

Authority, Effective Date

The Commission adopts rule 156 pursuant to the provisions of Section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-37(a)), and Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), and Sections 10(b) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b) and 78w(a)). Rule 156 will be effective immediately.

Text of Adopted Rule

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 230.156 as follows:

§ 230.156 Investment company sales literature.

(a) Under the federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and Rule 10b-5 thereunder (17 CFR Part 240), it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of securities issued by an investment company. Under these provisions, sales literature is materially misleading if it (1) contains an untrue statement of a material fact or (2) omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below.

(1) A Statement could be misleading because of:

(i) Other statements being made in connection with the offer of sale or sale of the securities in question;

(ii) The absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading; or

(iii) General economic or financial conditions or circumstances.

(2) Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where:

(i) Portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances; and

(ii) Representations, whether express or implied, about future investment performance, including: (A) Representations, as to security of capital, possible future gains or income, or expenses associated with an investment; (B) representations implying that future gain or income may be inferred from or predicted based on past investment performance; or (C) portrayals of past performance, made in a manner which would imply that gains or income realized in the past would be repeated in the future.

(3) A statement involving a material fact about the characteristics or attributes of an investment company could be misleading because of:

(i) Statements about possible benefits connected with or resulting from services to be provided or methods of operation which do not give equal prominence to discussion of any risks or limitations associated therewith;

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or an investment in securities issued by such company, services, security of investment or funds, effects of government supervision, or other attributes; and

(iii) Unwarranted or incompletely explained comparisons to other investment vehicles or to indexes.

(c) For purposes of this section, the term "sales literature" shall be deemed to include any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company. Communications between issuers, underwriters and dealers are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

By the Commission.

October 26, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34222 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-79-620]

Mobile Home Loans; Down Payments

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: With this amendment, Department requirements regarding mobile home loans are liberalized with respect to down payment provisions. The change is needed to enable borrowers purchasing a new home to offer their present home in lieu of, or as part of, a down payment. Currently, only a cash down payment is permitted.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Title I Insured and 312 Loan Servicing Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-6880. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On February 14, 1979, the Secretary of Housing and Urban Development published a Notice of Proposed Rulemaking (44 FR 9597) to amend 24 CFR Part 201, Section 201.535

Presently § 201.535 reads that a borrower shall make a minimum down payment in cash when purchasing a new mobile home. The amended rule would permit borrowers, presently owning mobile homes, to trade-in their units in lieu of the minimum down payment required. Comments of the Proposed Rule were invited until April 14, 1979. A total of eleven comments were received. Six of the comments favored the proposed action. The remaining five favored the amendment, but suggested that the borrower be able to use the mobile home trade-in in lieu of, or as part of the down payment. They pointed out that should the trade-in value be less than the minmum down payment, then the remainder could be paid in cash. We concur with this suggestion and have changed the final rule accordingly.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. This Finding was submitted with the Proposed Rule and a copy of it is available for public inspection during regular working hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10245, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, § 201.535 is amended by adding the following to the present text of the section:

§ 201.535 Borrower's minimum investment.

* * * A used mobile home owned by the borrower may be accepted as a "trade-in" in lieu of either the total, or part of, the cash down payment required: Provided, that the sum of any cash payments made by the borrower, and the amount of the borrower's equity in the home exclusive of liens on the home, is equal to or greater than the minimum down payment required under this section. No part of the required down payment may be borrowed. The mobile home being traded-in shall be clearly identified and the method used to determine the value of the home shall be clearly documented.

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535 (d)); Sec. 2, 48 Stat. 1246, (12 U.S.C. 1703).

Issued at Washington, D.C., October 30, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-34195 Filed 11-5-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Parts, 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, 244, and 250

[Docket No. R-79-734]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The change in the regulations increases the HFA maximum interest rate on insured mortgage loans. The change is necessitated by the current realities of high discounts and declining availability of FHA financing in the mortgage market. This action by HUD is designed to bring the maximum interest rate on HUD/FHA-insured mortgages into line with other interest rates currently prevailing in the mortgage market.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Chester C. Foster, Director, Actuarial Division, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410 (202-755-5880).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to increase the maximum interest rate which may be charged on mortgages insured by this Department. (The maximum interest rate on FHA mortgage and loan insurance programs has been raised from 10.50 percent to 11.50 percent for home programs and from 10.00 percent to 11.00 percent for the project programs.) The Secretary has determined that such changes are immediately necessary to meet the needs of the mortgage market, and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public procedure are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

1. In § 203.20 paragraph (a) is amended to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.50 percent per annum with respect to mortgages insured on or after October 26, 1979.

* * * * * *

2. In § 203.74 paragraph (a) is amended to read as follows:

§ 203.74 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.50 percent per annum with respect to loans insured on or after October 26, 1979.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT

Subpart A—Eligibility Requirements

1. Section 205.50 is amended to read as follows:

§ 205.50 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

1. In § 207.7 paragraph (a) is amended to read as follows:

§ 207.7 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

1. In § 213.10 paragraph (a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) The mortgage or a supplementary loan shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, or the lender and the borrower, which rate shall not exceed 11.00 percent per annum with respect to mortgages or supplementary loans receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

* * * * *

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

1. In § 213.511 paragraph (a) is amended to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.50 percent per annum with respect to mortgages insured on or after October 26, 1979.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

1. In § 220.576 paragraph (a) is amended to read as follows:

§ 220.576 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum with respect to loans receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

* * * * *

PART 221—LOW-COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

1. In § 221.518 paragraph (a) is amended to read as follows:

§ 221.518 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979. Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

1. In § 232.29 paragraph (a) is amended to read as follows:

§ 232.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

* * * * *

Subpart C—Eligibility Requirements—Supplemental Loans To Finance, Purchase and Installation Fire Safety Equipment

2. In § 232.560 paragraph (a) is amended to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum, with respect to loans insured on or after October 26, 1979.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

1. In § 234.29 paragraph (a) is amended to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.50 percent per annum with respect to mortgages insured on or after October 26, 1979.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart D—Eligibility Requirements—Rehabilitation Projects

1. In § 235.540 paragraph (a) is amended to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages insured on or after October 26, 1979.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

1. In § 236.15 paragraph (a) is amended to read as follows:

§ 236.15 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

1. Section 241.75 is amended to read as follows:

§ 241.75 Maximum interest rate.

The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum with respect to loans insured on or after October 26, 1979. Interest shall be payable in monthly installments on the principal then outstanding.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

1. In § 242.33 paragraph (a) is amended to read as follows:

§ 242.33 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not

exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

Subpart A—Eligibility Requirements

1. In § 244.45 paragraph (a) is amended to read as follows:

§ 244.45 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.00 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after October 26, 1979.

* * * * *

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Subpart C—Eligibility Requirements Applicable to all Mortgages To Be Coinsured

1. In § 250.318 paragraph (a) is amended to read as follows:

§ 250.318 Maximum mortgage interest rate.

(a) On and after October 26, 1979, the maximum interest rate on which commitments to insure shall be issued shall not exceed 11.00 percent per annum.

* * * * *

(Section 3(a), 82 Stat. 113; 12 USC 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 USC 3535(d).)

Issued at Washington, D.C., October 24, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 79-34196 Filed 11-5-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 881

Determination of Active Military Service and Discharge for Civilian or Contractual Personnel

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by adding a new part which establishes policy and procedures for processing individual applications for discharge of persons claiming membership in a group which has been determined by the Secretary of the Air Force to have performed active military service with the U.S. Air Force or a predecessor organization. It implements Section 401 of the GI Bill Improvement Act of 1977 (Pub. L. 95–202) and DOD Directive 1000.20, January 24, 1979.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT: Captain Susan D. Simmons, AFMPC/MPCAKE, Randolph AFB, Texas, telephone (512) 657–2148.

Title 32 of the Code of Federal Regulations is amended by adding a new Part 881 to read as follows:

PART 881—DETERMINATION OF ACTIVE MILITARY SERVICE AND DISCHARGE FOR CIVILIAN OR CONTRACTUAL PERSONNEL

Sec.

Authority: Section 401, Pub. L. 95–202.

Note.—This part is derived from Air Force Regulation 30–45, April 19, 1979.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 881.0 Purpose.

This part establishes policy and procedures for processing individual applications for discharge of persons claiming membership in a group which has been determined by the Secretary of the Air Force to have performed active military service with the U.S. Air Force or a predecessor organization. It implements Pub. L. 95–202, section 401; and DOD Directive 1000.20, January 24, 1979.

Note.—This regulation is subject to the Privacy Act of 1974. Each form that is subject to AFR 12–35, and required by this regulation, has a Privacy Act Statement in the body of the document.

§ 881.1 Explanation of terms.

(a) *Active Military Service.* The same as in Section 101, Title 38, United States Code.

(b) *Applicant.* A person who applies for a discharge based on membership in a group determined by the Secretary of the Air Force to have performed active military service with the U.S. Air Force or a predecessor organization. An application may be made on behalf of such a person, if he or she is deceased or mentally incompetent, by the spouse, next of kin, or legal representative.

(c) *Certified Group.* A group which has been determined by the Secretary of the Air Force to have rendered service which constituted active military service.

(d) *Characterization of Service.* A determination reflecting a member's behavior and performance of duty during a specific period of service. Under this part, service may be characterized as:

(1) Honorable, or

(2) Under Honorable Conditions (General Discharge).

(e) *Discharge.* Complete severance from the active military service on which the application for discharge is based. Also, the assignment of a reason for such discharge and characterization of service.

(f) *Group.* An organization which was similarly situated to the Women's Airforce Service Pilots, and whose members rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered.

§ 881.2 General guidance.

(a) *Group Determinations.* Acting as the Executive Agent for the Secretary of Defense, the Secretary of the Air Force will determine whether the service rendered by a group shall be considered active military service for the purpose of all laws administered by the Veterans Administration.

(b) *Individual Applications for Discharge:*

(1) Following the determination by the Secretary of the Air Force that the service of a group is considered active military service, individuals claiming to have been members of that group may apply for discharge to the appropriate military department. Applications made to the Department of the Air Force will be processed according to this part.

(2) If an applicant is determined to have been a member of a certified group, during the dates of its qualification, and the characterization of service is honorable or under honorable conditions, the Secretary of the Air

Force or designee will issue a discharge certificate and a DD Form 214, Report of Separation from Active Duty, to the applicant.

§ 881.3 Application procedures.

(a) *Who May Apply.* Any person who claims to be a member of a certified group may apply for discharge. An application may be made on behalf of such a person, if he or she is deceased or mentally incompetent, by the spouse, next of kin, or legal representative. Proof of death or mental incompetency as appropriate, must accompany such an application.

(b) *Where to Apply.* An application for discharge from the Air Force may be sent to HQ AFMPC/MPCDOA1, Randolph AFB, TX 78148.

(c) *How to Apply:*

(1) An application may be made using DD Form 2168, Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States (Encl 1 to DOD Directive 1000.20, January 24, 1979), or in narrative form,

(2) Forms are available upon request by writing to HQ AFMPC/MPCDOA1, Randolph AFB, TX 78148, or to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Applications should be as complete as possible. The burden of proof is on the applicant. The applicant should provide all available evidence to support a claim for membership in the group and to determine the character of service performed. The Individual Service Review Board will have available a copy of the report of the Advisory Panel to the DOD Civilian/Military Service Review Board (see DOD Directive 1000.20, January 24, 1979), which may contain information pertinent to individual service.

(4) Documentation may include, but is not limited to: separation or discharge certificates, mission orders, identification cards, contracts or personnel action forms, employment records, education certificates, diplomas, pay vouchers, certificates of awards, casualty information, and any other supporting evidence of membership, or character of service performed.

(5) The Air Force will not provide representation by counsel for the applicant, nor will it defray costs of such representation under any circumstances.

(d) *When to Apply.* There is no time limit for submitting an application for discharge.

§ 881.4 Application screening.

HQ AFMPC/MPCDOA1 will acknowledge receipt of each application. The application will then be reviewed to see if it is proper and complete:

(a) An application that should be considered by another military department will be referred to that department, and the applicant will be sent a written notice or a copy of the referral letter.

(b) If the Secretary of the Air Force has not made a determination concerning the particular group in which an applicant claims membership, the application will be returned without prejudice. An application may be resubmitted after Secretarial determination that the group is certified.

(c) Applications made by a group (or individuals on behalf of a group) are not processed under this part. If such applications are received, they are to be referred to the Secretary of the Air Force (SAF/MIPC), The Pentagon, Washington, DC 20330, for further review.

(d) Incomplete applications will be returned to the applicant without prejudicing later consideration.

(e) All proper, complete applications will be referred to the Individual Service Review Board for further consideration.

§ 881.5 Individual Service Review Board.

(a) *Purpose.* The Individual Service Review Board is established by the Secretary of the Air Force at the Air Force Manpower and Personnel Center (AFMPC) to:

(1) Review applications for discharge under this part;

(2) Make findings of fact based on evidence submitted; and

(3) Based on those findings, act further on the application as outlined in § 881.6.

(b) *Composition.* The Board consists of military members in grade O–5 (Lt Col) or higher, and civilian members, grade GS–12 or higher, appointed by the Assistant Deputy Chief of Staff, Manpower and Personnel for Military Personnel (AFMPC/MPC). Three members constitute a quorum. The senior member acts as Board chairperson. A nonvoting recorder keeps a record of the Board's actions concerning an application.

(c) *Administrative Support.* HQ AFMPC/MPCAKE, Randolph AFB TX 78148 provides administrative support to the Board.

§ 881.6 Application processing.

(a) The Individual Service Review Board meets in closed session and considers the application, all evidence submitted, and other relevant information available. Applicants or their representatives do not have the right to appear before the Board.

(b) The Board makes findings of fact based on the evidence and information available, and determines whether the applicant was a member of a certified group during the dates of its qualification and, accordingly, whether the application for discharge should be approved or disapproved.

(c) When the Board determines that the application for discharge should be approved, the Board also determines the period and character of the applicant's service.

(d) *Approved Applications:*

(1) If the Board approves an application for discharge and determines that the service characterization should be honorable, HQ AFMPC/MPCDOA1 issues the applicant a DD Form 256, AF, Honorable Discharge Certificate, and a DD Form 214, Report of Separation from Active Duty, under Part 888h of this chapter. A military grade will be entered on the DD Form 214 only upon an individual request from the Administrator of Veterans' Affairs.

(2) If the Board approves an application for discharge but determines that the service characterization should be "Under Honorable Conditions" (General Discharge Certificate), the case is forwarded to the Secretary of the Air Force (SAF/MIPC) for a final decision. After the final decision on the case, HQ AFMPC/MPCDOA1 issues the appropriate discharge certificate and a DD Form 214 to the applicant.

(e) *Application Denial Actions:*

(1) If the Board determines that an application for discharge should be denied because there is insufficient evidence to show that the applicant was a member of a qualifying group, or if the Board determines that the applicant's service cannot be characterized as under honorable conditions, HQ AFMPC/MPCDOA1 notifies the applicant of the determination.

(2) The applicant has 60 days from the date of this notice to submit additional evidence or information to HQ AFMPC/MPCDOA1, Randolph AFB TX 78148 for the Board's consideration.

(3) After 60 days the Board reviews the case again if additional evidence or information is submitted. If the Board determines that the application now merits approval, further action on the case follows as outlined in subparagraph (d) of this section.

(4) If the applicant fails to submit additional evidence or information or if, after review, the Board determines that the application should be denied, the case is sent to the Secretary of the Air

Force (SAF/MIPC) for final decision on the question of discharge and character of service.

(i) HQ AFMPC/MPCDOA notifies the applicant of the final decision and, if appropriate, issues the discharge documents.

(ii) An application which is denied is returned to the applicant, without prejudicing any later consideration.

(f) *Discharge Upgrade.* If a General Discharge Certificate is issued, the recipient may apply to the Air Force Discharge Review Board for discharge upgrade under Part 865, Subpart B, or to the Air Force Board for Correction of Military Records under Part 865, Subpart A of this chapter. HQ AFMPC/MPCDOA will provide copies of these parts and application forms to individuals who received a General Discharge.

§ 881.7 Disposition of documents.

(a) A copy of the application, supporting evidence, and DD Form 214 are filed permanently at the National Personnel Records Center, St. Louis MO 63132 for approved cases. Copies of DD Form 214 are also sent to the applicant, to the Veterans Administration, and to HQ AFMPC/MPCAKE, Randolph AFB, TX 78148.

(b) A copy of each application is maintained at HQ AFMPC/MPCAKE for up to 3 years.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-34224 Filed 11-5-79; 8:45 am]

BILLING CODE 3910-01-M

BOARD FOR INTERNATIONAL BROADCASTING

32 CFR Part 2600

Executive Order 12065; Implementing Regulations Relating to National Security Information

AGENCY: Board for International Broadcasting.

ACTION: Final rule.

SUMMARY: On September 28, 1979 there were published on pages 55910–55911 of the Federal Register proposed regulations to implement Executive Order 12065 relating to national security information. Public comment on the proposed regulations was invited through October 29, 1979.

Inasmuch as no public comment has been received, the proposed regulations are hereby adopted without change as of October 30, 1979.

EFFECTIVE DATE: October 30, 1979.

FOR FURTHER INFORMATION CONTACT:
Arthur D. Levin (202) 254–8040.

Walter R. Roberts,

Executive Director.

32 CFR is amended by adding a new Chapter XXVI, Board for International Broadcasting to include Part 2600 to read as follows:

PART 2600—SECURITY INFORMATION REGULATIONS

Sec.

Authority: Executive Order 12065.

§ 2600.1 Policy.

It is the policy of the Board for International Broadcasting (BIB) to act in accordance with Executive Order 12065 in matters relating to national security information.

§ 2600.2 Program.

The Executive Director is designated as the Board for International Broadcasting's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions and complaints regarding all elements of this program, and is solely responsible for changes to it and for ensuring that it is at all times consistent with Executive Order 12065. The Executive Director also serves as the BIB's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12065, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12065 are acted upon within 60 days of receipt.

§ 2600.3 Procedures.

(a) *Mandatory Declassification Review.* (1) All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Executive Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12065, unless the fact of its existence or non-existence would itself be classified under Executive Order 12065.

(2) A request for declassification shall be acted upon within 60 days of receipt, providing that the request reasonably describes the information which is the subject of the request for declassification.

(3) In light of the fact that the BIB does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director shall refer all requests for national security information in its custody to the Federal agency that classified it for review and disposition in accordance with Executive Order 12065 and that agency's regulations and guidelines.

(b) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive such documents, they shall be turned over to the Budget and Administrative Officer and secured, unopened, in the combination safes located in the file room of the BIB offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safes.

(c) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12065, Section 4–4, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Budget and Administrative Officer, and the log shall be stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(d) *Storage.* All classified documents shall be stored in the combination safes located in the file room of the BIB offices. The combination shall be changed as required by Information Security Oversight Office (ISOO) Directive No. 1, Section IV–F–5–a. The combination shall be known only to the Executive Director and his designees each of whom must have the appropriate security clearance.

(e) *Employee Education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction and storage procedures and shall be required to review Executive Order 12065 and appropriate ISOO directives. This shall be

accomplished by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the BIB.

(f) *Agency Terminology.* The use of the terms "Top Secret", "Secret" and "Confidential" shall be limited to materials classified for national security purposes.

[FR Doc. 79-34252 Filed 11-5-79; 8:45 am]
BILLING CODE 6155-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL 1342-5]

Section 107—Attainment Status Designation; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This rulemaking changes the attainment status of the Larimer-Weld designated area by redesignating certain portions of this area. The cities of Fort Collins and Greeley are redesignated to attainment of the primary standard for total suspended particulates and nonattainment of the secondary standard. The remaining areas of Larimer and Weld counties, outside the city of Fort Collins and Greeley, are redesignated to attainment based on EPA's Rural Fugitive Dust Policy. Comments were requested in a July 20, 1979, Federal Register notice (44 FR 42726), however, none were received.

DATES: Effective on November 6, 1979.

FOR FURTHER INFORMATION CONTACT: Robert DeSpain (303) 837-3471.

SUPPLEMENTARY INFORMATION: On April 30, 1979, Governor Lamm requested Alan Merson, former Regional Administrator, Region VIII, to redesignate the cities of Fort Collins and Greeley as nonattainment of the secondary standard for total suspended particulates, and the remaining areas of Larimer and Weld counties, outside the city limits of Fort Collins and Greeley, to be attainment.

High volume particulate sample data for 1977 and 1978 showed no primary standard violations occurred in Fort Collins and Greeley, but did show violations of the secondary standard. EPA concurs in this redesignation because it is supported by eight quarters of monitoring data showing attainment of the primary standard.

A number of monitors in small towns in Larimer and Weld counties have shown violations of the primary and secondary standards. However, these small towns are defined by EPA's Rural Fugitive Dust Policy as being rural. Particulate matter found in rural areas without the impact of man-made sources is typically native soil which for various reasons becomes airborne. These rural areas are being redesignated to attainment based on EPA's Rural Fugitive Dust Policy.

This notice of final rulemaking is issued under the authority of Section 107 of the Clean Air Act, as amended.

Dated: October 29, 1979.

Douglas Costle,

Administrator.

Title 40, Part 81 of the Code of Federal Regulations is amended as follows:

In § 81.306 the attainment status designation table for TSP is revised to read as follows:

§ 81.306 Colorado.

Colorado—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 2				
Cities of Fort Collins and Greeley		X		
Remainder of AQCR 2				X

* * * * *

[FR Doc. 79-34418 Filed 11-5-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 409

[FRL 1352-2A]

Sugar Processing Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends a regulation first promulgated on February 27, 1975. The regulation concerns the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT) to the Hilo-Hamakua Coast of the Island of Hawaii raw cane sugar processing subcategory (Subpart F) of the sugar processing point source category. This industry processes raw cane into sugar bearing juice which is evaporated to produce raw sugar. EPA is amending the regulation to impose less stringent total suspended solids limitations, to delete pH limitations, and to change the basis for the effluent limitations from the quantity of net cane to gross cane processed.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: William Sonnett, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. (202) 426-2707.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority

The regulation described in this notice is amended under authority of Sections 301 and 304(b) and (c) of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, P. L. 92-517) (the "Act"). This amended regulation covers the Hilo-Hamakua Coast of the Island of Hawaii Raw Cane Sugar Processing Subcategory (Subpart F) of the Sugar Processing Point Source Category (40 CFR Part 409).

II. Background

On February 27, 1975 (40 FR 8498), EPA promulgated interim final BPT effluent limitations guidelines for several raw cane sugar processing subcategories: Louisiana (Subpart D), Florida and Texas (Subpart E), the Hilo-Hamakua Coast of the Island of Hawaii (Subpart F), Hawaii (Subpart G), and Puerto Rico (Subpart H). Simultaneously, the Agency proposed BAT effluent limitations, standards of performance for new sources, and pretreatment standards for existing and new sources.

On January 17, 1977 (42 FR 3164), EPA suspended until March 1, 1978 that part of the interim final BPT regulation for the Hilo-Hamakua Coast of the Island of Hawaii (Subpart F), so that EPA could reevaluate the technical aspects of the regulation. The time frame of the initial suspension was insufficient to complete the data collection and analysis, and on September 25, 1978 (43 FR 43304) the

Agency extended the suspension of the BPT regulation for the subpart until May 30, 1979.

EPA has completed its review of all information relating to this matter including that resulting from field investigations by EPA's National Enforcement Investigation Center (NEIC) and that provided in industry submissions.

III. Summary of Findings

EPA has concluded that the original BPT suspended solids limitations should be eased. This revision accurately reflects the situation at the Hilo-Hamakua Coast treatment facilities, and is supported by actual operating data from two Hilo-Hamakua Coast factories.

Information submitted by the Hilo-Hamakua Coast factories shows that raw waste loadings vary considerably. This is related largely to the abundant and erratic rainfall of the Hilo Coast region. Soil and debris may comprise up to 70 percent of the material delivered for processing. This fluctuation affects waste treatment plant performance and attendant solids effluent levels. It is in recognition of this situation, that EPA finds that effluent limitations should be based on the quantity of gross cane (which includes soil and debris) rather than net cane processed.

The Agency also has concluded that limitation of pH is not appropriate at this time; sufficient data are not available to set specific limitations.

IV. Discussion of Major Issues

A. Current Study

There are now three operating sugar processing factories along the Hilo-Hamakua Coast on the Island of Hawaii which discharge process wastewaters to the ocean following on-site treatment. The three are the Honokaa Sugar Company, the Hamakua Sugar Company (formerly Iaupahoehoe Sugar Company), and the Hilo Coast Processing Company, Pepeekeo plant.

On July 31, 1978, EPA Region IX requested new data from industry through the use of the Administrator's authority under section 308 of the Clean Water Act. Industry submitted information covering the design, capital and operating cost, and operation of wastewater treatment facilities, as well as detailed information on soil characteristics and rainfall for the area.

Additional engineering field evaluation reports covering the Hilo-Hamakua factories were made available by the EPA National Enforcement Investigations Center. These reports contain detailed plant investigations made during the period October 24 through 31, 1977. Region IX and the Hawaii Department of Health also forwarded compliance monitoring reports and plant visit information. Moreover, representatives from EPA Effluent Guidelines Division, NEIC and Region IX visited the three factories in October 1977.

B. Applicable Technology

Review of the available data from these three factories confirms that the BPT technology originally recommended for this industrial subcategory is still appropriate. The components of BPT (as currently installed by two of the plants) include preliminary screening, grit removal, polymer addition and clarification of process wastewater, and vacuum filtration and land spreading of the thickened sludge. Ponds are used to retain sludge when the solids loadings are too heavy for the vacuum filters to handle.

The third factory uses a disposal system which has evolved from a series of narrow trenches to the current series of large ponds. This system is an alternative to BPT technology; however, past performance was not usually adequate to meet BPT limitations. The system had operation and maintenance problems related to timely removal of settled mud and soil solids from the ponds, and control of polymer shear during pumping. Under optimum operating conditions, EPA Region IX, NEIC, and State of Hawaii personnel have found that the system produces effluent quality similar to BPT. Factory personnel also attest to the ability of the system to meet limitations equivalent to the revised BPT limitations.

V. Basis for BPT Limitations

TSS

The TSS limitations in the regulation reflect waste treatment performance data from two of the three plants in the Hilo-Hamakua subcategory. These factories have complete treatment systems representative of best practicable control technology as discussed in the previous section, in Section VII of the original Development Document, and in Section VII of the Effluent Guidelines Report entitled *Reevaluation of the 1977 Effluent Limitations for the Hilo-Hamakua Coast Subcategory of the Cane Sugar Processing Industry.*

The support data for the revised TSS limitations is discussed in the above cited Effluent Guidelines Report. For example, at Honokaa the current 30-day average TSS values are 2.96 kg/kkg gross cane or less and maximum daily TSS values are 8.07 kg/kkg gross cane or less. At Hamakua, 30-day average TSS values are 3.6 kg/kkg gross cane or less. Except for one unexplained high value of 10.8, the maximum daily TSS values at this plant are 7.83 kg/kkg gross cane or less. At Pepeekeo, factory personnel report that under proper operating conditions the pond system serving the factory has achieved an average TSS value of 7.15 lb per 1,000 lb net cane. This level is equivalent to meeting the revised limitations of 3.6 lb TSS per 1,000 lb gross cane because gross cane is typically 50 percent debris or better.

Gross Cane

The original EPA regulation for TSS based effluent allowances on the quantity of net cane processed. The Agency is now basing effluent allowances on gross cane. This change is supported by operating information from within the industry as described in Section VII of the Effluent Guidelines Report. Gross cane provides a more accurate measure of varying waste loadings at the factories and attendant treatment capabilities. Gross cane also is useful for regulatory purposes because it represents an actual weighed quantity of cane and associated debris; the net cane processed is an estimation.

pH

The raw waste data reviewed in this study generally show strongly acidic soils in the region of the nonirrigated Hilo-Hamakua plantations. Soil pH values are reported to be between 4.3 and 5.5. As a result, factory process wastewaters in contact with the soils also become acidic.

EPA examined available pH discharge data, but found them very limited. Five values were reported for Honokaa and even less for Hamakua. The data were not considered sufficient to set a specific pH limitation or even a pH range. Further, industry reported that voluminous quantities of an alkaline material such as chemical lime would be required to raise the typical wastewater pH to the usually accepted minimum value of 6.

In consideration of these facts, the Agency is setting aside pH limitations.

VI. Economic Impact

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's regulations for implementing Executive Order 12044 require a Regulatory Analysis for major significant regulations involving annual compliance costs of $100 million or meeting other specified criteria. Where these criteria are met, the regulations

require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and an evaluation of regulatory alternatives. The regulations for the raw cane sugar processing industry do not require a formal Regulatory Analysis. Nonetheless, this rulemaking satisfies the formal Regulatory Analysis requirements. EPA's economic impact assessment is set forth in the *Economic Analysis of Effluent Limitations for the Hilo Hamakua Coast Subcategory of the Cane Sugar Processing Industry.* This report is available from the Water Economics Branch (WH-586), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The Pepeekeo sugar cane processing factory is owned and operated by the Hilo Coast Processing Company, a cooperative of which 50 percent is owned by the Mauna Kea Sugar Company. The other 50 percent is owned by approximately 300 independent growers who are largely dependent on the factory to process their sugar cane. The Hamakua Sugar Company owned by Theo. H. Davies and Company, owns and operates two factories which are located to the north of the Pepeekeo factory and growing area. However, due to transportation costs, these factories do not represent a viable outlet for the majority of sugar cane processed by the Pepeekeo factory. Consequently, if the factory is forced to close, the growers will no longer be able to produce sugar cane. EPA's original financial analysis had projected closure of the Pepeekeo factory even without EPT requirements.

If this factory were to cease operations, the sale of the land used to grow the sugar cane would offset the liabilities which the factory is likely to meet in closing such as severance pay and unfunded pension plans. However, in fact the factory has continued to operate and has invested in most of the water pollution control treatment necessary to meet EPT limitations. There are apparently certain factors not accounted for in our economic analysis, such as expectations about future land prices, that are keeping this factory open. Additional costs to meet the limitations are expected to be small and mostly for improved operation of the current treatment system. Due to these small costs and the factors not considered in our analysis, it is quite likely that this factory will remain in operation.

This factory employs 450 to 570 people and produces 125,000 tons of sugar or about .25 percent of total domestic production. Waste cane is burned by this factory to generate electricity for a portion of the island. Also, 300 independent growers depend on this factory to process their raw cane.

VII. Comment Period

The July 1, 1977, effective date for the best practicable control technology currently available has already passed. In addition, these regulations have been subjected to continued review. EPA solicited comments from industry and interested persons when the regulations were promulgated on February 27, 1975, when they were suspended on January 10, 1977, and when they were resuspended on September 25, 1978.

In view of the above actions, the Agency is dispensing with a notice of proposed rulemaking prior to this amendment.

VIII. Publication of Information

The report supporting this amendment entitled *Reevaluation of the 1977 Effluent Limitations for the Hilo-Hamakua Coast Subcategory of the Cane Sugar Processing Industry* can be obtained from the Environmental Protection Agency, Effluent Guidelines Division, WH-552, Washington, D.C. 20460.

A copy of the economic report on the Hilo-Hamakua Coast Subcategory of the Cane Sugar Processing Industry will be available from the Environmental Protection Agency, Analysis and Evaluation Division, WH-586, Washington, D.C. 20460.

IX. Small Business Administration

There are two Small Business Administration (SBA) programs that may be important sources of funding for small businesses in the Cane Sugar Processing Point Source Category. Section 8 of the FWPCA authorizes the SBA through its Economic Injury Loan Program to make loans to assist any small business facilities in adding to or altering their equipment facilities or methods of operation to meet Federal or State pollution control requirements. Loans can be made either directly by SBA or through a bank using an SBA guarantee. In addition, the Small Business Investment Act, as amended by Public Law 94-305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution facilities when the financing is provided through taxable and tax-exempt revenue or pollution control bonds. For further details on these programs please contact: Sheldon Sacks, Environmental Protection Agency, Financial Assistance Coordinator, Office of Analysis & Evaluation (WH-586), 401 M Street S.W., Washington, D.C. 20460, Telephone: (202) 755-3624.

X. Decision

In accordance with the above findings, the effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available for the Hilo-Hamakua Coast of the Island of Hawaii Raw Cane Sugar Processing subcategory (40 CFR Part 409, 8409.62) (Subpart F) are amended as set forth below and are effective on (use date of publication).

Dated: October 26, 1979.

Douglas M. Costle,

Administrator.

PART 409—SUGAR PROCESSING POINT SOURCE CATEGORY

Subpart F—Hilo-Hamakua Coast of the Island of Hawaii Raw Cane Sugar Processing Subcategory

Section 409.62 is revised to read as follows:

§ 409.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Effluent characteristics	Maximum for any 1 day		Average of daily values for 30 consecutive days shall not exceed	
	kg	lb	kg	lb
	kkg gross cane	1000 lb gross cane	kkg gross cane	1000 lb gross cane
BOD5	No limitations		No limitations	
TSS	9.9	9.9	3.6	3.6
pH	No limitations		No limitations	

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40 CFR Part 418

[FRL 1352-2B]

Fertilizer Manufacturing Point Source Category; Interim Final Regulation

AGENCY: Environmental Protection Agency.

ACTION: Interim Final Regulations.

SUMMARY: The United States Environmental Protection Agency (EPA) today is promulgating interim final regulations under the Clean Water Act which amend and clarify existing effluent limitations and guidelines for plants producing ammonia.

EFFECTIVE DATE: November 6, 1979. Comments received on or before January 7, 1979.

FOR FURTHER INFORMATION CONTACT: Harold B. Coughlin, Effluent Guidelines Division, 401 M Street S.W., Room 911, WSME (WH-552), Washington, D.C. 20460, (202) 426-2560.

SUPPLEMENTARY INFORMATION: Effluent limitations and guidelines, new source performance standards and pretreatment standards for the ammonia subcategory (40 CFR 418 Subpart B) were first promulgated by EPA on April 8, 1974 (39 FR 12832). On June 23, 1975 (40 FR 26275) § 418.22, effluent guidelines for best practicable control technology currently available (BPT), was amended pursuant to a stipulation approved by the United States Court of Appeals for the Sixth Circuit in *Vistron Corporation et al.* v. *Train*, Nos. 74-1755 et al., May 21, 1975. In the stipulation, EPA also agreed to review § 418.23 of the ammonia regulations, effluent limitations and guidelines based on best available technology (BAT), and to promulgate a final reviewable order with respect to said section by June 30, 1978. This interim final regulation is promulgated to fulfill the part of the stipulation calling for promulgation of a final reviewable order with respect to § 418.23.

As a result of comments made by the *Vistron* petitioners and Agency review of the regulations, changes are being made in the applicability and specialized definitions sections to clarify the scope of the regulations. EPA agrees with the comments received that if the guidelines in § 418.23 are applied to the occasional small leaks into cooling water, to absorption of ammonia from the air by cooling water, or to shipping losses, the guidelines are not achievable by any known technology.

EPA, in future work, also will consider whether supplemental best management practices regulations should be developed for this subcategory to control site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with or ancillary to industrial manufacturing or treatment processes.

Section 418.20 is revised to exclude discharges attributable to shipping losses and cooling tower blowdown. These discharges cannot be related to a unit of production. It is not feasible to establish an ammonia limitation for cooling tower discharge based on a unit of production because contamination in cooling tower water is due primarily to airborne pickup. The permitting authority will determine on a case-by-case basis the amount of any additional allowance for shipping losses and/or cooling tower blowdown, if such an allowance is considered appropriate. Losses occurring in the manufacturing area (i.e., losses not excluded from coverage by the definition of "shipping losses") such as leaks, spills and washdown water are covered by the guidelines even if carried to the plant outfall by rainwater.

Section 418.21 is revised by the addition of definitions for "shipping losses", "process wastewater" and "non-contact cooling water." Section 418.23 is amended to state that it applies only to process wastewater.

No pH limitation has been included in the BAT regulation because pH is a conventional pollutant. BCT regulations for ammonia were promulgated on August 29, 1979 (44 FR 50742). As explained in the response to comments on those regulations (44 FR 50762), pH for certain manufacturing point source categories, including the ammonia subcategory of the fertilizer manufacturing point source category is currently the subject of a petition for review and revision.

Legal Authority

These regulations are issued pursuant to sections 301 and 304 of the Clean Water Act, as amended (33 U.S.C. 1311 and 1314). These sections of the Act require EPA to develop effluent limitations for existing industrial point sources which, among other things, require (1) application of the best practicable control technology currently available (BPT) by July 1, 1977, (2) for conventional pollutants, application of the best conventional pollutant control technology (BCT) by July 1, 1984, and (3) for nonconventional pollutants and for pollutants not listed in Sections 301(b)(2)(C) and (D) of the Act, application of the best available technology economically achievable (BAT) not later than three years after the date that such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

Form and Effective Date

It is not now practicable because of the time constraint referred to above, to publish the amendments for this subcategory in proposed form and provide a 30-day comment period. Because the regulation is merely a clarification of the established regulation for BAT, it does not impose unreasonable requirements on the affected facilities. Accordingly, the Agency has determined pursuant to 5 U.S.C. 553(b) that notice and comment on the interim final regulations prior to promulgation would be impracticable. The Agency also finds good cause for these regulations to become effective upon publication (November 6, 1979).

Opportunity For Public Comment

The Agency encourages interested persons to submit written comments on these amendments. Comments should be submitted in triplicate to the Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, Attention: Distribution Officer, WH-552. All comments received within sixty days after date of publication will be considered.

A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library), Waterside Mall, 401 M Street S.W., Washington, D.C. 20460. The EPA information regulation, 40 CFR part 2, provides that a reasonable fee may be charged for copying materials at EPA offices.

Small Business Administration Loans

Section 8 of the Federal Water Pollution Control Act Amendments of 1972 (15 U.S.C. § 636(g)) authorizes the Small Business Administration, through its economic disaster loan program, to make loans to assist any small business concerns in effecting additions to or alterations in their equipment, facilities, or methods of operation in order to meet water pollution control requirements under the Clean Water Act, if the concern is likely to suffer a substantial economic injury without such assistance.

For further details on this Federal loan program, write to EPA, Office of Analysis and Evaluation, WH-586, 401 M Street S.W., Washington, D.C. 20460.

Statement of Promulgation

In consideration of the foregoing: 40 CFR, Chapter I, Subchapter N, Part 418, Fertilizer Manufacturing Point Source Category, Subpart B, Ammonia Subcategory is amended as set forth below.

These amendments supersede §§ 418.20, 418.21 and 418.23 of Subpart B—Ammonia Subcategory promulgated on April 8, 1974 (39 FR 12832).

These amendments shall be effective on November 6, 1979.

Dated: October 30, 1979.

Douglas M. Costle,

Administrator.

1. Section 418.20 is revised to read as follows:

§ 418.20 Applicability; description of the ammonia subcategory.

The provisions of this subpart are applicable to discharges resulting from

the manufacture of ammonia. Discharges attributable to shipping losses and cooling tower blowdown are excluded.

2. Section 418.21 is revised to read as follows:

§ 418.21 Specialized definitions.

For the purposes of this subpart:

(a) Except as provided below the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean the anhydrous ammonia content of the compound manufactured.

(c) The term "shipping losses" shall mean: discharges resulting from loading tank cars or tank trucks; discharges resulting from cleaning tank cars or tank trucks; and discharges from air pollution control scrubbers designed to control emissions from loading or cleaning tank cars or tank trucks.

(d) The term "process wastewater" shall mean any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include non-contact cooling water, as defined below.

(e) The term "non-contact cooling water" shall mean water which is used in a cooling system designed so as to maintain constant separation of the cooling medium from all contact with process chemicals but which may on the occasion of corrosion, cooling system leakage or similar cooling system failures contain small amounts of process chemicals: Provided, That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contamination: And provided further, That all reasonable measures have been taken that will mitigate the effects of such contamination once it has occurred.

3. Section 418.23 is amended to read as follows:

§ 418.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged in process wastewater from ammonia production by a point source subject to the provisions of this subpart after application of the best available technology economically achievable.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1000 kg of product)	
Ammonia (as N)	0.05	0.025
	English units (pounds per 1000 lb of product)	
Ammonia (as N)	0.05	0.025

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40 CFR Parts 424 and 434

[FRL 1350-6]

Coal Mining Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Extension of partial suspension of catastrophic storm exemptions.

SUMMARY: This notice extends the Agency's partial suspension of the catastrophic storm exemptions to effluent limitations guidelines and new source performance standards for the coal mining point source category. The Agency requires additional time to review the comments received.

DATE: The suspension is extended to December 21, 1979.

FOR FURTHER INFORMATION CONTACT: B. Matthew Jarrett, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460. [202] 426-4617.

SUPPLEMENTARY INFORMATION: On July 6, 1979, EPA suspended part of the catastrophic rainfall exemption to BPT and NSPS requirements for the coal mining point source category [44 FR 39391]. By its terms, that suspension is effective for 120 days, and is to expire on November 3, 1979.

As part of the suspension, the Agency initiated a new, two-stage rulemaking proceeding to address this issue. First, the Agency solicited public comments for 30 days on several possible alternative approaches. Id. Second, on August 14, 1979, the Agency announced that two technical studies were available for public comment, and circulated these documents to all persons, agencies, and organizations on its coal mining mailing list [44 FR 47595]. At that time, the Agency requested all comments on these reports to be postmarked no later than October 1, 1979. *Id.* However, in response to several requests to extend this comment period, on September 25, 1979, EPA extended the comment period to October 19, 1979 [44 FR 55223].

The extension of the suspension is necessitated, in part, by the extension of the public comment period. In addition, the storm exemption issue involves complex technical issues, as is amply reflected in the studies performed for the Agency and public comments received. The Agency intends to review the issues and data thoroughly, and to ensure that this rulemaking results in the soundest possible regulation. This cannot be done, however, by November 3.

Accordingly, in order to ensure a fully informed and reasoned decision, EPA is hereby extending the partial suspension announced on July 6, and this rulemaking proceeding, to and including December 21, 1979.

Dated: October 29, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-34410 Filed 11-5-79; 8:45 am]
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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 55

[Docket No. FEMA-FIA-55]

Statewide "FAIR Plans"

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim Rule and Request for Comments.

SUMMARY: This Interim Rule amends the Regulations concerning the operation of Statewide FAIR Plans under the Urban Property Protection and Reinsurance Act of 1968. This action fulfills recently enacted statutory requirements added to the Act as a result of amendments introduced by Congresswoman Holtzman (12 U.S.C. 1749bbb-3[b] [11] and [c]) and will permit a greater degree of underwriting flexibility with a view towards achieving the primary goal of the FAIR Plans—contributing to the revitalization of the inner cities. Thus, the intended effect of the amendments is twofold: to effectuate, fully, the provisions of the Act and to assure the continued availability of essential property insurance in inner city areas.

DATES: Effective date November 6, 1979. Written comments should be submitted on or before December 6, 1979.

ADDRESS: Comments to be included in rules docket should be addressed to

Donald Collins, Federal Insurance Administration, Federal Emergency Management Agency, Room 5146, 451 Seventh Street, S.W., Washington, D.C. 20410. Copies of all comments received will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT:
F. V. Reilly, Federal Insurance Administration, Room 5126, 451—7th Street, S.W., Washington, D.C. 20410, Telephone Number: 202–755–6580.

SUPPLEMENTARY INFORMATION:
Recognizing that FAIR Plans are established to provide "essential property insurance coverage" to all eligible applicants, a greater degree of underwriting flexibility should be permitted if the real purpose of the FAIR Plan, contributing to the revitalization of the inner cities, is to be more broadly achieved. Considerations should serve to encourage the maintenance, repair, upkeep and rehabilitation of properties if a more viable socio-economic environment is to be achieved for residents and businesses in such areas. The purpose of the new regulation is to promulgate in regulation form revisions to the current Regulations which became effective September 1, 1970 under the Urban Property Protection and Reinsurance Act of 1968, (12 U.S.C. 1749bbb–3).

The New Regulations

Redefine "surcharge" to include rates or advisory rates above those set by the principal State-licensed rating organization in the voluntary market.

Set guidelines for selection of public members on the FAIR Plan Board of Directors.

Set limits on rates to be charged for FAIR Plan coverage.

Require notification to the Administrator of unapproved Plan changes.

Add to procedures for making placement facilities readily available to the public by expanding on telephone accessibility.

Advise when surcharges can be applied, following an inspection of the property.

Eliminate unnecessary reinspection rules to permit States and FAIR Plans to schedule reasonably timely reinspections.

Advise when a period of time which is shorter than the normal 30-day period, but not less than 5 days, may be applied for cancellation or non-renewal of coverage.

Delete section on Inapplicability of Regulations.

Set criteria for Plan evaluation and waiver or regulations by the Administrator.

The Federal Emergency Management Agency has determined that notice and public procedures are unnecessary since the primary purposes of the regulations are to set limits on insurance rates to be charged to consumer, to establish procedures for consumer representation on FAIR Plan governing bodies, and to permit FAIR Plans to exercise greater flexibility in dealing with the problem of arson. Since the rule confers a benefit on FAIR Plan insureds implementing a recommendation of the United States Fire Administration's Report to Congress on Arson and relieves a restriction on the State authority's ability to make certain changes relating to FAIR Plan operations without obtaining a waiver from the Federal Insurance Administrator, it is being made effective upon publication. However, interested persons are invited to submit comments with respect to these regulations and all such comments will be considered before a final rule becomes effective.

A Finding of Inapplicability respecting the National Environment Policy Act of 1969 has been made. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the above address.

Accordingly, Subchapter B of Chapter I of Title 44 is amended at follows:

PART 55—STATEWIDE "FAIR PLANS"

1. Section 55.1(t) is amended to read as follows:

§ 55.1 Definitions

* * * * *

(t) "Surcharge" means (1) any condition charge, and (2) any general or other charge above the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market.

2. The following paragraphs (e) and (f) are added to § 55.2:

§ 55.2 Composition and supervision of FAIR Plan.

* * * * *

(e) At least one-third of the voting members of every board of directors, board of governors, advisory committee, and other governing or advisory board or committee for each Plan shall be individuals who are not employed by, or otherwise affiliated with, insurers, insurance agents, brokers, producers, or other entities of the insurance industry.

(f) For the purpose of this section the boards and committees cited above are only those boards and committees which have expressed or delegated authority to make decisions affecting the operation of the FAIR Plan or affecting individual policyholders or applicants (i.e., governing committees, underwriting committees, claims committees, appeals committees, etc.). Compliance with this section shall mean:

(1) States with no state legislative prohibition to amending the composition of the FAIR Plan Board of Directors, Board of Governors, Advisory Committee and other governing or advisory board or committees have amended the governing instrument of such boards or committees so that the appointment of these public members is by the State Insurance Commission or Governor, not by the insurers.

(2) States with state legislative prohibition to amending the composition of the FAIR Plan Board of Directors, Board of Governors, Advisory Committee, and other governing or advisory board or committee should, pending passage of necessary state legislation, supplement the existing boards and committees with public advisors or consultants appointed by the state not by the insurers. This interim procedure will satisfy compliance for a period of time ending with the close of the first full regular session of the appropriate state legislative body following September 30, 1979.

(3) When the state insurance authority has determined that (1) or (2) above is not appropriate because of local conditions or state law the state insurance authority shall transmit to the Administrator an alternative plan of compliance, an explanation of the desirability of such alternative plan and a certification that the alternative plan is designed to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, as amended.

3. The following paragraph (d) is added to § 55.3:

§ 55.3 Coverage and operation of the plan.

* * * * *

(d) No risk within the Plan shall be insured at a rate higher than the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market; except that this provision shall not be deemed to prohibit the application to any such risk, on a nondiscriminatory basis, of condition charges for substandard physical conditions within the control of the applicant for insurance as set by the principal State-licensed rating organization for the voluntary market.

4. The following sentence is added to the end of § 55.4(a):

§ 55.4 Insurer participation and placement programs.

(a) * * * A placement program or amendments thereto not previously approved must be transmitted to the Administrator in accordance with the provisions of § 55.11(b).

* * * * *

5. Section 55.4(d) is amended to change May 1 date to October 1 and to delete the word "FAIR" in line 8, as follows:

* * * * *

(d) As soon after October 1 of each year as practicable, each state insurance authority under whose jurisdiction a Plan has been put into operation shall notify the Administrator of the names of all insurers that are fully participating (on a risk-bearing basis) in the Plan of such State on that date in accordance with the conditions of the Standard Reinsurance Contract in effect at that time. For a Plan in which participation by insurers is voluntary, the notification shall include an estimate by the authority of the aggregate premium volume of essential property insurance written by participating insurers in relation to the total premium volume in such lines written by all property insurers in the State.

* * * * *

6. Section 55.5(b) is amended to change "manner of," line 6, to "procedures for" and to change the last phrase "where these facilities maintain an office" to "with a population over 100,000 where the Plan provides coverage and (3) the providing of an 800 number WATTS line is encouraged," as follows:

§ 55.5 Inspections and applications for insurance.

* * * * *

(b) The Plan shall make its inspection and placement facilities readily available and accessible to the general public by providing a central source of information on the services it provides and on the procedures for application. To assure the public's access to such information, the telephone information number of the Plan shall be listed alphabetically as "FAIR Plan" (1) in the white sections and (2) under "Insurance" in the classified sections of the telephone directories of each city with a population over 100,000 where the Plan provides coverage and (3) the providing of an 800 number WATTS line is encouraged.

* * * * *

7. Section 55.7(b) is amended by the addition of language between "inspection report," and "and no surcharge shall be made on the basis of environmental hazards," as follows:

§ 55.7 Placement action after inspection report.

* * * * *

(b) No surcharge shall be made on any risk unless it is based upon an appropriate, objective, and identifiable physical condition of the property, as disclosed by an inspection and specified in an inspection report, and is also a condition charge for substandard physical conditions within the control of the applicant for insurance as set by the principal State-licensed rating organization for the voluntary market. Such conditions, as disclosed by an inspection, along with the condition charges shall be specified in an inspection report transmitted to the applicant and no surcharge shall be made on the basis of environmental hazards.

* * * * *

8. Section 55.7(c)(2) is amended by the addition of language, as follows:

* * * * *

(c) * * *

(2) The property's present use, such as extended vacancy or extended unoccupancy of the property for 60 consecutive days (other than for rehabilitation purposes) or the improper storage of flammable materials; or

* * * * *

9. New §§ 55.7(c) (4) and (5) are added as follows:

* * * * *

(c) * * *

(4) Buildings in which any combination of the following conditions exists:

(i) failure to pay real estate taxes on the property for two (2) years of more, or

(ii) failure, within the insured's control, to furnish heat, water, or public lighting for 30 consecutive days or more, or

(iii) failure within a reasonable time to correct conditions dangerous to life, health or safety.

(5) Buildings on which because of their physical condition there is an outstanding order to vacate, an outstanding demolition order or which have been declared unsafe in accordance with applicable law.

* * * * *

§ 55.8 [Deleted]

10. Section 55.8, "Prohibition of Unnecessary Reinspections", is deleted.

11. Section 55.9 (a) is amended by the deletion of the period after "necessary" and the addition thereto of new language, as follows:

§ 55.9 Notice of cancellation or nonrenewal.

(a) Except in cases of owner or occupant incendiarism, material misrepresentation, or nonpayment of premium, each Plan shall require its participating insurers to give, and each such insurer shall, give property owners no less than 30 days prior written notice of any cancellation or nonrenewal of coverage initiated by the insurer with respect to any eligible risk, whether or not such risk is then insured under the Plan, in order to allow the affected property owner sufficient time to apply for an inspection and to obtain coverage under the Plan if necessary, except that a shorter notice of not less than 5 days may be used if one of the following conditions exists in which event a policy may be cancelled subject to the policy conditions imposed by the state insurance authority:

(1) At least 75% of the rental units in the building are unoccupied.

(2) Fire damage exists and the insured has stated or such time has elapsed as clearly indicates that the damage will not be repaired.

(3) Following a fire, permanent repairs following satisfactory adjustment of loss have not commenced within 60 days.

(4) Property has been abandoned and there has been removal of undamaged salvage.

(5) Utilities such as electric, gas, or water services have been disconnected and the insured has failed to pay his account for such services within 120 days, or property taxes have not been paid for a two year period. (Property taxes in dispute shall not be considered as not being paid.)

(6) Any cancellation upon less than thirty days notice arising out of any of the above conditions shall follow a procedure which includes, as a minimum, the following:

(i) The designation of a responsible official by the state insurance authority to serve as the point of contact with the FAIR Plan.

(ii) The notification either in writing or by phone to the official by the FAIR Plan of any such cancellation. The state insurance authority shall maintain a record of all such cancellations.

(iii) The notification to the insured by the FAIR Plan of the cancellation, giving the reasons for the action and setting forth the insured's prerogative to appeal to the state insurance authority for review of the cancellation. The cancellation shall stand unless the state insurance authority rules otherwise.

* * * * *

12. Paragraphs 55.12 (a) (b) and (c) are deleted. The following new paragraphs

(a) and (b) are added. As revised § 55.12 reads as follows:

§ 55.12 Plan Evaluation and Waiver of Regulations.

(a) When the Plan's program involves either:

(1) A Plan not previously approved by the Administrator; or

(2) A Plan in a State which has no State-licensed rating organization; or

(3) A Plan in a State in which the rates or advisory rates set by the principal State-licensed rating organization for essential property insurance in the voluntary market are not reflective of the indicated rates based on the voluntary insurance market experience; the state insurance authority shall transmit to the Administrator:

(i) A copy of the Program; and

(ii) An explanation of the Program; and

(iii) A certification that the Program is designed to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, as amended.

(b) The Administrator may waive compliance with any requirement of this part with respect to any State, temporarily or indefinitely, and in whole or in part, if the state insurance authority certifies that compliance is unnecessary or inadvisable under local conditions or State law and the Administrator concurs in such certifications.

(Title XII of the Housing and Urban Development Act of 1969 (Pub. L. 90-488, 88 Stat. 476); Reorganization Plan No/3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Delegation of Authority to Federal Insurance Administrator (44 FR 20963))

Issued at Washington, D.C., October 23rd, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-34255 Filed 11-5-79; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 3100

Oil and Gas Leasing; Noncompetitive Leasing of Acquired Military and Naval Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Suspension of certain regulations applicable to noncompetitive oil and gas leasing.

SUMMARY: On November 1, 1979, the Secretary declared a moratorium on the issuance of oil and gas leases for acquired lands within military reservations except in protective leasing situations. Consistent with this moratorium, the application of 43 CFR Part 3110 to such lands is hereby suspended and no noncompetitive oil and gas lease application shall be accepted for such lands until further notice.

DATE: This notice is effective as of the opening of Bureau Land Management offices on November 2, 1979.

FOR FURTHER INFORMATION CONTACT: Charles E. Weller of the Division of Onshore Energy Resources, Bureau of Land Management, (202) 343-7753, or William R. Murray, Jr., Branch of Onshore Minerals, Office of the Solicitor, (202) 343-4803.

SUPPLEMENTARY INFORMATION: The over-the-counter noncompetitive oil and gas leasing provisions of 43 CFR Part 3110 are suspended in order to implement the November 1, 1979, moratorium on the noncompetitive leasing of acquired military and naval lands under these provisions. The memorandum establishing this moratorium is reprinted below. This suspension is designed to prevent the filing of additional offers to lease these lands pending completion of the studies listed in the Secretary's memorandum, so that any leasing procedure selected might be implemented more smoothly.

Dated: November 5, 1979.

Cecil D. Andrus,

Secretary of the Interior.

DEPARTMENT OF THE INTERIOR

Office of the Secretary, Washington, D.C. 20240

November 1, 1979.

Memorandum

To: Director, Bureau of Land Management.

Through: Deputy Assistant Secretary, Land and Water Resources.

From: Secretary.

Subject: Oil and Gas Leasing on Acquired Military and Naval Lands.

By this memorandum, I am directing the imposition of a moratorium on the leasing of all acquired military and naval lands. These lands were made subject to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351 *et seq.*, by section 12(a) of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 1090, 30 U.S.C. 352.

By regulation published August 22, 1978 (43 FR 37202), and effective September 21, 1978, the Department authorized the receipt of applications to lease this class of lands. All applications filed prior to the effective date of this regulation were subject to rejection under 43 CFR 2091.1(e), which provides: Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by . . . (e) the fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

The issuance of several leases based on such defective applications has aroused substantial controversy over noncompetitive oil and gas leasing generally and the procedures used in leasing acquired military and naval lands in particular. I direct the moratorium in leasing these lands in order to allow the Department to study how it can best establish a fair and responsible method for leasing acquired military and naval lands. This study should conclude:

- Whether leasing of these lands should await the enactment of S. 1637, which would reform the oil and gas leasing system, or comparable legislation;
- Whether the simultaneous filing system should be applied to these lands;
- Whether applications filed first in time *after the regulatory change* should be given priority in leasing the lands.

This moratorium will allow the Congress and the Department to study these issues, and the potential value of the lands that would be subject to such leasing.

This moratorium is imposed consistent with established authority on the nature of the interest of an oil and gas lease applicant and on the Secretary's power to cancel administratively leases issued in response to defective applications to lease. In *Udall* v. *Tallman*, 380 U.S. 1 (1965), the Supreme Court held that an application for lease is a hope or expectation, not a right, and the Secretary may in the exercise of his statutory discretion reject any application for reasons of policy or law. In *Boesche* v. *Udall*, 373 U.S. 472, 481 (1963), the Supreme Court held that the Secretary has the authority to cancel administratively any leases "issued through administrative error," including a lease derived from a defective application.

Consistent with the regulations and law discussed above, I have today cancelled 20 leases in Fort Chaffee, Arkansas, issued in violation of 43 CFR 2091.1(e). A copy of this decision is attached. In addition, by this memorandum I direct the Bureau to cancel on these grounds any other oil and gas lease issued on acquired military and naval lands in violation of this regulation. I also hereby direct the Bureau to reject all pending oil and gas lease applications filed prior to the effective date of the regulatory revision, September 21, 1978.

Further, in order to conduct an orderly examination of the fairest and most responsible method of leasing such lands, I direct the Bureau not to issue any additional oil and gas leases on acquired military and naval lands until this inquiry is completed, and supplemental instructions on the disposition of the remaining lease offers are issued.

November 1, 1979.

Cecil D. Andrus

[FR Doc. 79-34517 Filed 11-5-79; 11:28 am]

BILLING CODE 4310-10-M

Proposed Rules

Federal Register
Vol. 44, No. 216
Tuesday, November 6, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1133

[Docket No. AO-275-A31]

Milk in the Inland Empire Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the order provisions pertaining to pool plant qualification standards for distributing plants, and to how much milk may be moved directly from producers' farms to nonpool plants and still be priced under the order. It also recommends certain changes in various payment and reporting dates. The decision is based on industry proposals considered at a public hearing held June 12–13, 1979. The recommended changes are necessary to reflect current marketing conditions and to assure orderly marketing in the area.

DATE: Comments are due November 26, 1979.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D. C., 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, D. C., 20250, 202–447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: Issued May 14, 1979; published May 18, 1979 (44 FR 29088.)

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Inland Empire marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D. C., 20250, by November 26, 1979. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Spokane, Washington, on June 12–13, 1979. Notice of such hearing was issued May 14, 1979 (44 FR 29088).

The material issues on the record of the hearing relate to:

(1) Pool plant qualification standards for a distributing plant.

(2) Diversion of producer milk.

(3) Reporting and payment dates.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pool plant qualification standards for a distributing plant.* The provisions of the order that relate to a distributing plant that simultaneously qualifies as a pool plant under the Inland Empire order and another order should be revised. Specifically, a distributing plant that was regulated under the Inland Empire order in the preceding month should remain regulated under the Inland Empire order until the fourth consecutive month in which its route disposition in the marketing area of the other order is greater than in the Inland Empire marketing area.[1] Such provisions should be revised further to provide that a distributing plant with more route disposition in the Inland Empire marketing area than in the marketing area of another order be exempt from pooling and pricing under the Inland Empire order for the months it is pooled under the other order's lock-in provision.

The present order does not contain a lock-in provision. Rather, it provides that a distributing plant that qualifies for pooling under the Inland Empire order and another order in the same month shall be pooled under the other order if the plant's route disposition in the marketing area of the other order is greater than its disposition in the Inland Empire marketing area.

Northwest Dairymen's Association (NDA) proposed adoption of a 2-month lock-in provision similar to those in the nearby Oregon-Washington and Puget Sound orders and in a number of other Federal orders. The provision adopted herein differs slightly from this proposal by providing for a total lock-in period of 3 months rather than 2 months.

The marketing agent for NDA is Consolidated Dairy Products Co. (CDP). CDP operates distributing plants at Seattle, Washington, and at Moses Lake, Washington. The Seattle plant qualifies as a pool plant under the Puget Sound order, while the Moses Lake plant, which CDP acquired in December 1978, is presently regulated under the Inland Empire order.

The Moses Lake plant distributes fluid milk products in the Inland Empire and Oregon-Washington marketing areas and at locations outside these marketing areas. Fluid milk products from CDP's Seattle plant are distributed in the Inland Empire, Oregon-Washington, and Puget Sound marketing areas and at various locations outside these marketing areas.

The lock-in provision proposal was an adjunct to another proposal of the proponent cooperative which would expand the marketing area to include a 5-county area in central Washington that is located immediately west of the present marketing area. The proponent stated that both proposals were designed to aid in insuring that the Moses Lake plant maintains continuous pool plant status under the Inland Empire order.

The area proposed by NDA to be added to the present marketing area would include the Washington counties of Adams, Chelan, Douglas, Grant, and Lincoln. An exhibit introduced into the record indicated that the estimated April 1, 1978, population of the proposed

[1] This provision is commonly referred to as a "lock-in" provision.

5-county area was about 133,000. The principal population centers in this area are Wenatchee (Chelan County) and Moses Lake (Grant County).

The Moses Lake distributing plant is located within this 5-county area. This area, according to the NDA spokesman, contains a significant segment of the market served by the Moses Lake plant. He stated that by expanding the marketing area, as proposed, it would significantly increase the proportion of this plant's route distribution in the Inland Empire marketing area relative to such sales in the Oregon-Washington area. Adoption of this proposal and the lock-in proposal, the NDA spokesman claimed, would tend to insure the plant's continuous pooling under the Inland Empire order and avoid the possibility of it becoming pooled under the Oregon-Washington order.

Proponent's spokesman stated that the primary impact of the Moses Lake plant being fully regulated under the Orgeon-Washington order would be on NDA's member producers who are now, and have been regularly, pooled under the Inland Empire order. Because of the tighter diversion provisions of the Oregon-Washington order compared to the Inland Empire order, only a portion of the producers who are pooled through the Moses Lake plant could continue to be pooled if the plant were fully regulated under the Oregon-Washington order. As a result, the spokesman pointed out, substantial quantities of NDA's member milk would be unable to qualify as producer milk under either order.

Additionally, the proponent's witness testified that unlike other handlers on the market, CDP, as marketing agent for NDA, must operate its Moses Lake plant in such a way as to avoid the possibility of the plant becoming fully regulated under the Oregon-Washington order. Although conceding that curently there is no problem regarding the order under which the Moses Lake plant would be regulated, he stated that a situation could develop where the plant would switch back and forth between the 2 orders. For instance, he stated that CDP might decide to handle its Seattle plant's route distribution in the Oregon-Washington market from its Moses Lake plant to achieve greater operating efficiencies at that plant and to reduce transportation costs in serving its Oregon-Washington customers. He called attention particulary to the disruptive marketing conditions and the confusion among producers that would result if regulation of the plant they supplied shifted back and forth between the Inland Empire and Oregon-Washington orders. Its proposals to expand the marketing area and to adopt a lock-in provision, he maintained, would prevent such a shift from occurring between the 2 orders and would provide market stability to both producers and handlers.

In further support of its proposal to expand the marketing area, the proponent cooperative asserted that the 5-county area is an integral part of the Inland Empire market since it represents a significant market outlet for the Inland Empire handlers. He concluded that the proposed marketing area expansion would be advantageous to Inland Empire producers and would promote orderly market conditions.

The proponent cooperative stated that its proposed 2-month lock-in provision was designed to give CDP the opportunity to adjust its overall route distribution in the Oregon-Washington marketing area to avoid sudden unanticipated shifts in the pool status of the Moses Lake plant and the potential depooling of some NDA producers. The spokesman for the proponent cooperative indicated that the loss of acquisition of a chain store or school milk contract by the Moses Lake plant, which usually represents a sizable volume of milk, makes the inclusion of a lock-in provision under the Inland Empire order necessary if disruptive marketing conditions are to be avoided. He added that the adoption of the lock-in provision, as proposed, will make the Inland Empire order, in this regard, comparable to the nearby Oregon-Washington and Puget Sound orders.

Two individual producer members of NDA supported the cooperative's two proposals, which they stated would continue to assure producers who have been regularly associated with this market of a stable market situation without the possibility of a large portion of the Class I sales switching back and forth between the two orders.

Mayflower Farms, a cooperative association which represents a substantial number of produers on the market and which operates a pool distributing plant at Spokane, Washington, opposed proponent's marketing area proposal but supported in principle the lock-in provision proposal. The spokesman for the cooperative questioned the need for extending regulation into the proposed 5-county area. In this connection, the spokesman stated it would add virtually no Class I sales to the pool, nor would it improve market stability, since fluid milk distribution in the proposed area now is practically all from distributing plants that are regulated by one of the 3 orders that operate in the northwest.

The record evidence shows that although the Moses Lake plant has been qualifying each month for pooling under both the Inland Empire and Oregon-Washington orders, it has not been pooled continuously under either order. For example, during the 25-month period from May 1977 through May 1979, the plant, under its former owner and then CDP, was regulated by the Oregon-Washington order during 17 of such months and by the Inland Empire order during 8 months. In fact, when CDP acquired the Moses Lake plant in December 1978, it was regulated under the Oregon-Washington order. The plant did not become reglated under the Inland Empire order until April 1979 after the fluid milk processing operations at the recently acquired Veradale, Washington, plant of CDP were transferred to the Moses Lake plant. Before this change, the Veradale plant had been a distributing plant under the Inland Empire order for a number of years. With the shift in processing operations, the Moses Lake plant's route distribution in the Inland Empire marketing area ranged between 65 and 85 percent of the plant's total Class I sales in April and May 1979, the months just preceding the hearing.

At its present level of route distribution in the Inland Empire order marketing area, the Moses Lake plant has no problem in meeting the pooling requirements of the Inland Empire order. However, proponent contends that CDP would have a pooling problem if and when a decision is made to have its Moses Lake plant process and distribute the volume of milk that its Seattle plant now markets in the Oregon-Washington market. Testimony of the proponent's witness indicates that if this change were made, the Moses Lake plant's route distribution in the Inland Empire market would be about 51 percent of the plant's total sales based on CDP's sales data at the time of the hearing. At this projected route distribution level, any loss or acquisition of a chain store or school milk contract or the closing of schools during the summer months could result in the shifting of regulation of the Moses Lake plant from one order to another.

Ideally, a distributing plant that qualifies for pooling under more than one order during the same month should be regulated under the order in which such plant's route distribution is the largest. This assures that all handlers will have the major portion of their sales subject to the same pricing and other regulatory requirements. However, recognition should be given to the

adverse effects of shifting back and forth from month to month by a distributing plant that is usually regulated by the Inland Empire order but which also has route distribution in another order market. Such switching of the regulatory status of a distributing plant between orders creates uncertainty and abrupt changes in prices for producers and handlers alike.

It is unlikely that any distributing plant operator would intentionally operate his plant that has sales in two regulated markets in a manner which would result in shifting regulation between orders. Rather, such shifts take place unexpectedly and result from an unanticipated gain or loss of a substantial sales outlet. Since sales contracts are frequently renegotiated on a quarterly basis, such a loss of sales may only be temporary. In addition, the closing of schools during the summer months frequently results in a temporary shift of sales during June, July, and August. When such shifts take place, a distributing plant operator usually attempts to adjust the plant's pattern of distribution in its various sales areas to insure its regulation by the order under which the plant is normally regulated. In those instances, however, where a distributing plant's route distribution is nearly equal in 2 regulated markets, such adjustments often cannot be accomplished in time to prevent the plant from switching between the two orders.

These considerations demonstrate the need for a provision that will prevent the sudden, unanticipated shift in regulation of a distributing plant between orders. The lock-in provision adopted herein, which, as noted earlier, differs from the one proposed by providing for a total lock-in of 3 months instead of 2, is designed to serve this purpose.

Under this provision, the Inland Empire order would continue to regulate a plant until the fourth consecutive month in which it remained qualified but had a greater proportion of its route distribution in the marketing area of another order. During the 3-month lock-in period, the other order must have a complementary provision which will permit the plant to be pooled by the Inland Empire order even though such plant has the lesser portion of its sales there. If the other order does not have such a provision, but requires that the plan be pooled under that order, the plant should be exempt from all but the reporting provisions of the Inland Empire order. Further, for the Inland Empire order to be complementary to orders with similar lock-in provisions, it is provided that any plant shall be exempt from full regulation under this order, even though such plant has more route distribution in this marketing area than in another order's marketing area, if the plant is subject to full regulation under the other order.

The proposal to include in the marketing area the 5 central Washington counties of Adams, Chelan, Douglas, Grant, and Lincoln should not be adopted on the basis of this record. As noted previously, the thrust of proponent's proposal to add this 5-county area to the marketing area was to insure that CDP's newly acquired Moses Lake plant would be regulated by the Inland Empire order rather than by the Oregon-Washington order though having the major portion of its distribution in the Inland Empire marking area on a continuing basis.

It may be true, as NDA claimed, that since the order was initially issued in 1956, significant changes have occurred which have resulted in the 5-county area becoming an integral part of the Inland Empire market. The principal changes cited in this regard were the growth in population, vast improvements in the highway systems, and the expanded distribution patterns of Inland Empire handlers. It is evident from the record, however, that such handlers compete for sales in each county with either Puget Sound or Oregon-Washington handlers, or both. This raises the question of which market has the greatest sales in these counties. If the majority of sales in a county are from another order market, it would appear that that county is more closely associated with that market than with the Inland Empire market and, thus, should not be included in the Inland Empire marketing area. Information in the hearing record concerning the amount of sales from each market is limited to the names of handlers distributing fluid milk products in each of the 5 counties under consideration. There is no indication of the proportion of the total sales in each of the counties by each of these handlers or by groups of handlers regulated under each order. In view of this, it cannot be concluded on the basis of this record if each of the 5 counties is, in fact, closely associated with the Inland Empire market.

It appears that most of the fluid milk sales in the 5-county area are by handlers regulated under one of the three Northwest orders. However, the record indicates that two unregulated handlers located in Douglas County and Okanogan County, Washington, also have route distribution in at least two (Douglas and Grant Counties) of the proposed five counties. The record does not provide any information, though, as to the extent of their fluid sales in these counties.

Without more detailed marketing information on each handler's involvement in distributing fluid milk products in the proposed area, the marketing area should not be extended to include the 5-county area. Accordingly, the proposal is denied.

2. *Diversion of producer milk.* The limits on diversion of producer milk from pool plants to nonpool plants should be increased. During the months of September through February, a cooperative association should be allowed to divert to nonpool plants (except producer-handler plants) a quantity of milk not in excess of 70 percent of the quantity of producer milk that the association causes to be delivered to or diverted from pool plants during the month. During the months of March through August the cooperative should be allowed to divert 80 percent of such receipts. The operator of a pool plant (other than a cooperative association) should be allowed to divert to nonpool plants any milk that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month. The quantity of milk that the operator of a proprietary plant may divert should not exceed 70 percent during the months of September through February and 80 percent during the months of March through August of the milk received at or diverted from such pool plant that is eligible to be diverted by the plant operator.

The order should continue to require that milk of a producer be physically received at a pool plant during each of the months of September, October, and November in order to be eligible for diversion to a nonpool plant as producer milk during each respective month. However, the requirement that 2 days' production be received should be changed to require only one day's production.

Presently, diversions to nonpool plants are limited to 50 percent of producer milk received at pool plants or diverted to nonpool plants during the months of September through March, and 70 percent of such receipts during other months of the year.

Northwest Dairymen's Association (NDA) proposed that diversion limits be increased to 70 percent during each of the months of September-February and 80 percent during each of the months of March-August. It also proposed that the 2-day delivery requirement during September, October, and November be eliminated. A spokesman for NDA

testified that his organization is the major reserve supplier for the market and that the proposed higher diversion limits are necessary to allow the cooperative to continue that function while at the same time keep its producers associated with the market. He said that during the months of September through February NDA may be required to divert between 58 and 66 percent of its member-producers' milk supplies; during March-August, he stated, its diversions may exceed 75 percent of its members' milk.

The witness testified that, due to the irregular demand for the milk by pool distributing plants, of NDA/his organization may be required to divert significant quantities of milk during a certain month and yet on individual days within the month no milk may be diverted. He cited October and November 1978 as examples of this. During one day of October, 100 percent of NDA's milk was sent to pool plants, but for the month as a whole 66 percent was diverted to nonpool plants. Similarly, during 2 days of November, all of NDA's milk went to pool distributing plants, but 60 percent of the cooperative's milk was diverted to nonpool plants during the month.

NDA proposed that March be included with the high diversion months, i.e., April-August, because during March 1979 it had to divert 67.4 percent of its member-producer milk, and because this figure is closer to the 68.3 percent diverted during April 1979 than to the 61.0 percent diverted during February 1979.

In support of NDA's proposal or remove the 2-day delivery requirement during September, October, and November, a spokesman testified that this requirement causes unnecessary cross-hauling of milk. He stated that NDA operates a pool distributing plant at Moses Lake and a nonpool manufacturing plant in Spokane. Because of the delivery requirement, he said, NDA is forced to haul member milk in northern Idaho to the Moses Lake pool plant in Grant County, thereby displacing other members' milk in Grant County which must then be hauled to Spokane. It would be more efficient, he stated, to allow the milk of their member producers to go to the nearest plant. He stressed that NDA would continue to meet this requirement if necessary to keep the "producer" status of its members, but urged that, in the interest of energy conservation, it be eliminated.

Spokesmen for Mayflower Farms and Carnation Company testified in opposition to NDA's proposal for higher diversion limits. The position of both of these organizations was basically that NDA's problem concerning diversions was caused by what they believed to be an unreasonable pricing policy with respect to the sale of the cooperative's member milk. Opponents claimed that NDA's pricing policy discouraged handlers such as Carnation and Mayflower from buying more milk from NDA, with the result that the cooperative had considerable amounts of surplus milk to dispose of. A witness for Mayflower testified that if NDA abandoned its over-order pricing policy, Mayflower would purchase more milk from NDA. He noted that for a while NDA did, in fact, suspend its over-order pricing and that Mayflower immediately began to utilize NDA for a reserve supply.

Another witness for Mayflower contended that "the basic problem is that the legitimate producers in the Inland Empire market wish to maintain a high enough pay-out to be able to produce milk for this market without the unnatural association of milk in the Yakima Valley with this pool, thereby diluting the price while the milk is being shipped to another market for handling." He held that since 1973 NDA has increased the amount of milk pooled in the Inland Empire market by about 30 million pounds annually, and that most of this milk was new milk to the market and was coming from Yakima County, Washington. He also indicated that since the Yadima County milk is closer to NDA's manufacturing plant at Issaquah than to its Spokane manufacturing plant, the milk should be pooled in another market (presumably Puget Sound since Issaquah is within the Puget Sound marketing area).

A third spokesman for Mayflower testified in opposition to the proposal to remove the 2-day delivery requirement during September, October and November. Removing this requirement, he stated, would open up the market to any producer even though the milk was not associated with the market for fluid use. If the proponent's proposal is accepted, he said, there would be no reasonable relationship between the producer and the order he is associated with. He said Mayflower considers this an injustice to those producers who supply the legitimate needs of the market.

A representative for the Carnation Company testified that NDA's proposed diversion limitations would not result in the orderly marketing of milk in the Inland Empire marketing area. He stated that NDA's diversion problems are caused by its pricing policies, which discourage handlers from buying NDA's milk. In summary, he said, Carnation opposes changing the diversion limits because it believes a better solution would be for NDA to price its milk to pool handlers in the market at a more realistic level.

Opposition testimony by Mayflower and Carnation centered around NDA's pricing policy, which opponents belaive is the cause of NDA's diversion problem. NDA objected on the record and in its brief to any consideration of its pricing policy with regard to the diversion issue. At the hearing, the Administrative Law Judge overruled the objection and allowed such testimony to be heard.

It must be recognized that there are costs in providing milk supplies to fluid milk distributors, especially when such supplies are required on an irregular basis. The record indicates that NDA is being called upon to supply milk to distributing plants on certain days during each month of the year. There are obvious costs in payrolling, market service, field work, and hauling which must be covered. Moreover, there is the cost of idle or underutilized plant facilities equipment, and personnel when NDA is called upon to fill the need of its Class I customers on a sporadic basis.

There is no indication that denying NDA's proposal for higher diversion limits would result in the cooperative changing its pricing policy. Instead, it is more probable that NDA would undertake additional, and more costly, hauling and handling of its reserve milk to stay within the diversion limits. This could be done by first receiving milk at its Moses Lake plant and then transferring it to one of its manufacturing plants.

Data in the record show that NDA is performing a reserve supply service for this market. During the 12 months from April 1978 through March 1979, the cooperative delivered milk to pool distributing plants on all but a few days. During the months of October and November, there were days when all of its milk normally associated with the Inland Empire market was delivered to pool distributing plants. Under these circumstances, it is reasonable that steps be taken under the order to assure the orderly disposition of milk supplies in the market that are not needed for fluid use.

As mentioned above, Mayflower objected to the pooling of NDA's Yakima County producers under the Inland Empire order. Milk of such producers accounts for a substantial share of the milk NDA has associated with this market in recent years.

Contrary to Mayflower's position, producers should be free to market their

milk wherever they can realize the greatest returns. This sometimes means that producers already on a market will experience a lower blend price as they share the market's Class I returns with new producers on the market. However, such sharing is an essential feature of the Federal order program and promotes orderly marketing. Order provisions should be such that milk supplies attracted to the regulated area can be marketed in an orderly manner.

There is a history of problems with diversion limits in this market. Diversion limits were suspended for the months of September 1977-January 1978, September-November 1978, and are now suspended based on this record from September-December 1979. During the prior two suspensions, there was no indication of any abuse of NDA in bringing additional producers onto the market. Actually, the number of NDA producers on the market has decreased from an average of 122 in 1974 to an average of 104 in 1978. Accordingly, opponents' fear that NDA is trying to "load the pool" with new milk is not supported by the historical experience in this market.

NDA's basic diversion problem stems from a change in the basis of determining its allowable diversions under the order that occurred in September 1978. Prior to that time, NDA's allowable diversions were determined under the optional method provided by the order whereby 2 or more cooperatives could have their allowable diversions coumputed on the basis of the combined deliveries of milk of their member producers. This option for computing allowable diversions permitted NDA to perform its reserve supply function in the market and still maintain producer status for all its dairy farmer members who were associated with the fluid milk market. Except for the fall months of 1977, NDA, which has a disproportionate share of the reserve supplies on the market, was able to stay within the order's diversion limits through this arrangement.

When this arrangement was terminated by the cooperatives involved (one of which was Mayflower Farms), NDA petitioned the Department for a hearing, which was subsequently held in July 1978, requesting that diversion limits be raised to 90 percent from September through March and be unlimited from April through August. It also requested that the diversion limits be suspended for the months of September, October, and November 1978. In the fall of 1978, Consolidated Dairy Products acquired the Early Dawn distributing plant in Veradale, Washington, a suburb of Spokane. As a result of this acquisition, NDA advised the Department that the diversion limits requested at the July hearing would no longer be appropriate, whereupon the Department terminated the proceeding.

In December 1978, CDP acquired the additional fluid milk distributing plant at Moses Lake. It then closed the Veradale plant and transferred all of its sales to the Moses Lake plant.

Because of CDP's acquisition of the 2 distributing plants in the past year, NDA's diversion problem is not as acute as it was because of increaed deliveries to pool plants. Nevertheless, the present diversion limits are still too restrictive and will cause NDA to make uneconomic milk movements between plants to keep its member milk qualified for pooling.

From the data presented at the hearing showing NDA's percent of diversions from January 1976 through April 1979, it is apparent that the cooperative would be unable to meet the order's present diversion limits. Accordingly, relaxing the limits of 70 percent during September-February and 80 percent during March-August appears to be both appropriate and necessary to allow the cooperative to keep its milk pooled in an orderly and efficient manner.

The order should continue to require that milk of each producer on the market be delivered to a pool plant at least once during each of the months of September, October, and November. This should not cause any major inefficiences for the proponent cooperative since the data on the record indicate that on certain days during these months virtually all producer milk of the cooperative is delivered to pool plants.

The requirement that 2 days' production of each producer be delivered to a pool plant during each of the months of September, October, and November should be slightly modified to require the delivery of only one day's production. This requirement will be sufficient to demonstrate that a producer has some association with the fluid market.

The present 2-day requirement can cause problems when one day's production of a large producer is picked up in the same bulk tank truck that is also picking up 2 days' production of smaller producers. In such a situation, it would be easy to assume that every producer on the truck had contributed 2 days' production and not discover the error until the end of the month when it was too late to correct it. Requiring that only one day's production be received at a pool plant during the month would eliminate this problem.

3. *Reporting and payment dates.* The following changes in reporting and payment dates should be made in the order:

a. In § 1133.30, the date for filing the report of receipts and utilization should be changed from the 7th to the 9th;

b. In § 1133.31, the date for filing the payroll report should be changed from the 20th to the 22nd;

c. In § 1133.32(d), the date for filing the supporting statement to producers should be changed from the 17th to the 19th;

d. In § 1133.62, the date for announcing the uniform price should be changed from the 12th to the 14th;

e. In § 1133.71, the date for making payments into the producer-settlement fund should be changed from the 14th to the 16th;

f. In § 1133.72, the date for making payments out of the producer-settlement fund should be changed from the 15th to the 18th;

g. In § 1133.73(b), the date for making final payments to producers for whom a cooperative association is not collecting payment should be changed from the 17th to the 19th;

h. In § 1133.73(c)(1) and (d), the date for making final payments to cooperative associations should be changed from the 15th to the 18th;

i. In § 1133.85, the date for paying the administrative assessment should be changed from the 14th to the 16th;

j. In § 1133.86(b), the date for transferring marketing service deductions to the market administrator should be changed from the 14th to the 16th; and

k. In § 1133.86(c), the date for transferring marketing service deductions to cooperative associations should be changed from the 16th to the 18th.

The above changes, with the exception of the changes noted in subparagraphs g and h above, were proposed at the hearing by Mayflower Farms. Although a proposal to change the dates of final payments to producers and cooperative associations was contained in Mayflower's original proposal as printed in the notice of hearing, proponent requested deletion of these changes at the hearing. The only reason given for this change was that "producers would like to be paid as soon as possible."

A spokesman for Mayflower testified that the purpose for requesting the changes in reporting and payment dates was to allow sufficient time for meeting reporting and payment deadlines under the order. Also, he said, the requested changes would provide more compatibility with comparable payment

and reporting dates under the neighboring Oregon-Washington and Puget Sound orders. He stated that because of the 350-mile distance between Mayflower's Spokane operation and its main office at Portland where all data processing occurs, and the fact that their data processing system has been set up to meet the requirements of the Oregon-Washington order, Mayflower has found it impossible to process all of the necessary information in time to file their report of receipts and utilization under the Inland Empire order by the 7th day of the month. Under the Oregon-Washington order, this report is not due until the 9th day of the month.

A spokesman for Northwest Dairymen's Association supported Mayflower's proposal, as amended at the hearing. He stated that his organization supported the changes in payment and reporting dates because they found it difficult to meet the deadlines imposed under the current provisions of the order.

The order's reporting and payment dates should be so structured that handlers can reasonably be expected to comply with them. Since the final payment dates are dependent upon several prior steps, including the filing of the report of receipts and utilization and the handler payments into and out of the producer-settlement fund, all of the dates must be coordinated to allow sufficient time for the sequence of events to occur.

As adopted herein, the report of receipts and utilization would be due by the 9th day of the month. After receiving all of the handler reports, the market administrator would compute the uniform price and the required payments into or out of the pool. The uniform price would be announced on the 14th day of the month. Handlers would be required to make payments into the producer-settlement fund on the 16th day of the month. The market administrator would make payments to handlers out of the producer-settlement fund by the 18th day of the month. Also by the 18th day of the month, handlers would be required to make final payments to cooperative associations.[2] On the 19th, handlers would be required to pay producers for whom payment is not made to a cooperative association.

As mentioned above, Mayflower requested that no change be made in the final payment dates to producers and cooperative associations. It should be apparent, however, that a proprietary handler or a cooperative association with a Class I utilization below the market average should not have to pay their producers until they have received their payment from the market administrator out of the producer-settlement fund. For this reason, it is necessary to delay final payment to cooperatives until the 18th day of the month, the date that payments are due out of the producer-settlement fund. Payments to producers who are not being paid through a cooperative association should be due by the 19th day of the month. The one day delay will allow a cooperative association to receive their payment and mail their checks to producers so that their producers receive payment at about the same time as producers being paid directly by handlers.

In addition to the reporting and payment dates discussed above, certain other dates for various reports and payments should also be changed. The payroll report to the market administrator should now be due on the 22nd day of the month instead of the 20th. This 2-day delay recognizes that final payments to producers have been pushed back from the 17th to the 19th. As a corollary change in making final payment to producers, the date for submitting the supporting statement, showing weights, tests, deductions, and the rate of payment, should also be changed from the 17th to the 19th day of the month.

The date for paying the administrative assessment and marketing service deductions to the market administrator should be changed from the 14th to the 16th. This will allow a handler to transfer this money to the market administrator at the same time that any required payments are made into the producer-settlement fund. When a cooperative association performs the marketing service for a producer, the handler, instead of paying the market administrator, transfers the marketing service deduction to the cooperative association. The date for making this payment should be changed from the 16th to the 18th, when final payments are due the cooperative.

Although Mayflower originally proposed changing the date for making partial payments to producers, the cooperative withdrew this request at the hearing. In view of this, and the lack of support for such a change from any other party, no change should be made in the partial payment date.

Mayflower also proposed originally that a report from the market administrator to cooperative associations be delayed from the 16th to the 18th. This report, which shows the class utilization of milk delivered by a cooperative association as a handler on bulk tank milk delivered from producers' farms to pool plants of other handlers, is needed by the cooperative in billing its customers. Since final payments to cooperatives will be due by the 18th day of the month, this report should continue to be due by the 16th day so that a cooperative can convey the necessary information to its customers. The other date changes that are made herein will not preclude the market administrator from reporting this information by the 16th day of the month. For these reasons, no change should be made in the date for making this report.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area. The minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of

[2] It will probably be necessary for the market administrator to transfer funds out of the producer-settlement fund via an inter-bank transfer or hand delivery in order to insure that handlers receiving such payments have the funds on hand in time to meet the final payment deadline.

milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Inland Empire marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1133.7, paragraph (d) is revised to read as follows:

§ 1133.7 Pool plant.

* * * * *

(d) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area. However, if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other order; or

(4) A plant pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments of fluid milk products, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this order.

§ 1133.9 [Amended]

2. In § 1133.9(f), the reference to "§ 1133.7(d)(2)" is changed to "§ 1133.7(d)(2), (3), or (4)."

3. In § 1133.13, paragraph (c) is revised to read as follows:

§ 1133.13 Producer milk.

* * * * *

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account under paragraph (b)(1) of this section the milk of any member-producer eligible for diversion. The total quantity of milk so diverted may not exceed 70 percent in any of the months of September through February, and 80 percent in any of the months of March through August, of its total member-producer milk received at all pool plants or diverted therefrom during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member-producers if each association has filed in writing with the market administrator a request for such computation;

(2) A handler operating a pool plant may divert for his account under paragraph (a)(2) of this section milk of any producer eligible for diversion, other than a member of a cooperative association which diverts milk under paragraph (c)(1) of this section. The total quantity of milk so diverted may not exceed 70 percent in any of the months of September through February, and 80 percent in any of the months of March through August, of the milk received at or diverted from such pool plant during the month from producers who are not members of a cooperative association that diverts milk under paragraph (c)(1) of this section;

(3) Milk diverted in excess of the limits specified shall not be considered as producer milk, and the diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler.

(4) Producers eligible for diversion are those whose milk has been received at the pool plant prior to diversion from such plant (but not necessarily in the current month). Producers eligible for diversion in the months of September, October, or November must in addition have at least one day's production physically received at a pool plant in the respective month; and

(5) For the purpose of location adjustments pursuant to §§ 1133.52 and 1133.75, diverted milk shall be considered to have been received at the location of the plant to which diverted.

§ 1133.30 [Amended]

4. In the introductory paragraph of § 1133.30, the number "7th" is changed to "9th".

§ 1133.31 [Amended]

5. In the introductory paragraph of § 1133.31, the number "20th" is changed to "22nd" and the reference to "§ 1133.7(d)(2)" is changed to "§ 1133.7 (d)(2), (3), or (4)".

§ 1133.32 [Amended]

6. In § 1133.32 (a) and (c), the reference to "§ 1133.7(d)(2)" is changed to "§ 1133.7 (d)(2), (3), or (4)"; and in § 1133.32(d), the number "17th" is changed to "19th".

§ 1133.62 [Amended]

7. In the introductory paragraph of § 1133.62, the number "12th" is changed to "14th".

§ 1133.71 [Amended]

8. In the introductory paragraph of § 1133.71, the number "14th" is changed to "16th"; and in paragraph (c), the reference to "§ 1133.7(d)(2)" is changed to "§ 1133.7(d)(2), (3), or (4)".

§ 1133.72 [Amended]

9. In § 1133.72, the number "15th" is changed to "18th".

10. In § 1133.73, the number "17th" in paragraph (b) is changed to "19th", and paragraphs (c) and (d) are revised to read as follows:

§ 1133.73 Payments to producers and to cooperative associations.

* * * * *

(c) In lieu of payments to individual producers pursuant to paragraphs (a) and (b) of this section, payments shall be made to a cooperative association which requests such payment in writing and which the market administrator determines is authorized by its members to collect payments for their milk. The request for such payment and a written promise to reimburse the handler for any actual loss incurred by him because of an improper claim on the part of the cooperative association shall be sent to both the handler and the market administrator. In addition, the cooperative shall file simultaneously with the market administrator a certified list of members which shall be subject to verification at his discretion through audit of the pertinent records of the cooperative association. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market

administrator and shall be subject to his determination. Payments pursuant to this paragraph shall be made as follows:

(1) On or before the second day prior to the date of payment pursuant to paragraph (a) of this section, an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to such paragraph; and

(2) On or before the 18th day after the end of the month, an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraph (b) of this section.

(d) Each handler who receives milk for which a cooperative association is the handler pursuant to § 1133.9 (b)(2) and (c) shall pay such cooperative association for such milk as follows:

(1) On or before the second day prior to the date payments are due individual producers, a partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day of the month, a final payment for such milk at the applicable uniform price, less payment made pursuant to paragraph (d)(1) of this section.

* * * * *

§ 1133.85 [Amended]

11. In § 1133.85, the number "14th" is changed to "16th".

§ 1133.86 [Amended]

12. In § 1133.86(b), the number "14th" is changed to "16th" and in § 1133.86(c) the number "16th" is changed to "18th".

Note.—This recommended decision has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this decision should not be classified "significant" under those criteria. This decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on October 31, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-34223 Filed 11-5-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Chapters II, III and X

[Docket No. CAS-RM-79-701]

Inquiry To Obtain Public Comment on the Clarity of Regulations

AGENCY: Office of Conservation and Solar Energy, Department of Energy.

ACTION: Notice of Inquiry.

SUMMARY: As part of the Department of Energy (DOE) regulatory reform effort, the Office of Conservation and Solar Energy (CS) invites interested parties to submit written comments identifying CS regulations which may be hard to understand and to propose, if possible, examples of rules which should be redrafted in better English.

DATE: Written comments are due by December 31, 1979.

ADDRESS: Send comments to: Ms. Carol Snipes, Office of Conservation and Solar Energy, Department of Energy, Room 2221-C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585, telephone (202) 376-1651.

FOR FURTHER INFORMATION CONTACT:

Herbert B. Myers, Department of Energy, Office of Conservation and Solar Energy, Room 2220, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585, Phone: (202) 376-1978/4826.

Ms. Verlette Gatlin, Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room GA-152, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone: (202) 252-5969.

SUPPLEMENTARY INFORMATION:

I. Background

On March 24, 1978, the President issued Executive Order 12044, "Improving Government Regulations," calling on all Federal agencies to reduce regulatory burdens imposed upon the American public, to write regulations more clearly, and to seek ways to involve the public more in the regulatory process. The Office of Conservation and Solar Energy and Department of Energy as a whole aim to meet these goals.

The most recent report on the status of DOE's regulatory reform actions was published in the Federal Register on August 14, 1979 (44 FR 47736). That notice described an agenda of 11 new reform initiatives for the second half of the 1979 fiscal year based on suggestions received from the public. As one of those initiatives, the then Office of Conservation and Solar Applications (now called the Office of Conservation and Solar Energy) promised to obtain public comment on identifying any of its regulations which may be difficult to understand. The below listed CS final rules have been published in the Federal Register (FR) subsequent to those already appearing in the Title 10 Code of Federal Regulations (CFR).

(1) Weatherization Assistance Program Amendments—44FR 31570, May 31, 1979
(2) Revised Approach of Weatherization of Dwelling Units—44FR 50788, August 29, 1979
(3) Electric & Hybrid Vehicle Planning Grants—44FR 57370, October 4, 1979
(4) Amendment to Water Heater Test Procedures—44FR 52632, September 7, 1979

II. Comments Requested

We request the specific comments of the following:

(1) Which regulations or regulatory provisions are especially difficult to comprehend or are unnecessarily complicated?

(2) How could regulatory language be changed to accomplish the CS purpose of issuing regulations that are clearly written? Recommendations of specific language changes would be more useful than general recommendations.

III. Comment Procedures

A. Written Comments

Comments should be submitted in an envelope marked "Regulatory Reform—CS" to Ms. Carol Snipes, Room 2221-C, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 before 4:30 p.m., December 31, 1979. Ten copies are requested unless there is a special hardship. All comments received will be available for public inspection in DOE's Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. from 8:00 a.m. to 4:30 p.m. on any working day.

Issued in Washington, D.C., October 31, 1979.

Maxine Savitz,

Acting Assistant Secretary, Conservation and Solar Energy.

[FR Doc. 79-34160 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 864

[Docket No. 78N-1897]

Medical Devices; Classification of Heparin Assays

Correction

In FR Doc. 79-27676, appearing at page 53020 in the issue of Tuesday, September 11, 1979, the second line following the headings should read, "**ACTION:** Proposed Rule.".

BILLING CODE 1505-01-M

21 CFR Part 864

[Docket No. 78N-1902]

Medical Devices; Classification of Prothrombin Time Tests

Correction

In FR Doc. 79-27681, appearing at page 53025 in the issue of Tuesday, September 11, 1979, the second line following the headings should read, "**ACTION:** Proposed Rule.".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 886

[R-79-732]

Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects; Transmittal of Interim Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of interim rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information an interim rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR PART 886, SUBPART C—SECTION 8 HOUSING ASSISTANCE PROGRAM FOR THE DISPOSITION OF HUD-OWNED PROJECTS

This interim rule would revise 24 CFR Part 886, Subpart C, governing the disposition of HUD-owned projects under the Section 8 Housing Assistance Payments Program. The present provisions of Subpart C were adopted as an interim rule, published in the Federal Register on September 11, 1978. This rule revises the present provisions of Subpart C, on the basis of the comments received on the 1978 interim rule, and adds new provisions governing the disposition of projects where repairs and/or rehabilitation will be accomplished by the purchaser.

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)), sec. 324, Housing and Community Development Amendments of 1978))

Issued at Washington, D.C. October 30, 1979.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 79-34240 Filed 11-5-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Entry and Work in Confined Spaces; Advance Notice of Proposed Rulemaking; Corrections

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Advance Notice of Proposed Rulemaking; Corrections.

SUMMARY: This notice announces corrections to the advance notice of proposed rulemaking for entry and work in confined spaces which appeared in the Federal Register on October 19, 1979 [44 FR 60333].

FOR FURTHER INFORMATION CONTACT: Dr. Jerry L. Purswell, Director of Safety Standards Programs, Occupational Safety and Health Administration, Room N-3605, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-8061.

SUPPLEMENTARY INFORMATION: On October 19, 1979, a document was published in the Federal Register [44 FR 60333] which requested information of value in the development of standards for entry and work in confined spaces in general industry. There were several inadvertent errors and omissions in that document. This document corrects those errors.

Accordingly, FR Doc. 79-32416, appearing at 44 FR 60333, is corrected as follows:

1. Page 60334 column 2, paragraph 1, line 5, "1910.194(d)(11)" is corrected to read "1910.94(d)(11)."

2. Page 60334 column 3, paragraph 3, line 3, "confinded" is corrected to read "confined."

3. Page 60334 column 3, question number 18 is added between questions 17 and 19, to read as follows: "What are recommended procedures for rescuing stricken personnel from a confined space?"

4. Page 60334, column 3, paragraph 11, line 3, "wage" is corrected to read "wage rates."

Signed at Washington, D.C. this 31st day of October 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-34274 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 34

Requirement for Equal Opportunity During Construction and Operation of the Alaska Natural Gas Transportation System; Rescheduled Public Meetings

AGENCY: Department of the Interior.

ACTION: Public Meetings in Alaska.

SUMMARY: 43 CFR Part 34 was published as a proposed rule on October 12, 1979 (44 FR 59096). Public meetings on this proposed rule were also announced and scheduled to be held in November 1979. Since the time that document was published, the Department has found it necessary to reschedule those meetings to be held in Alaska.

DATES: November 28, 1979, Federal Building, Conference Room C-114 701 C Street, Anchorage, Alaska 99513; November 29, 1979, Noel Wein Public Library, 1215 Cowles Street, Fairbanks, Alaska 99701; November 30, 1979, North Slope Meeting Hall, Barrow, Alaska 99723.

All meetings will commerce at 9 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Shelton, Director, Office

for Equal Opportunity, Department of the Interior, 202–343–4331.

Dated: November 1, 1979.

Edward E. Shelton,

Director, Office of Equal Opportunity.

[FR Doc. 79-34220 Filed 11-5-79; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 5733]

Proposed Zone and Base Flood Elevations for the City of Dardanelle, Ark.; Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed zone and base flood elevations as described below.

The proposed zone and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone and base flood elevations are available for review at the City Hall, Dardanelle, Arkansas. Send comments to: The Honorable Dana Merritt, Mayor, 502 South Second Street, Office 116 South Front, Dardanelle, Arkansas 72834.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080)

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone and base flood elevations for the City of Dardanelle, Arkansas, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 66 (presently appearing at its former Section 24 CFR Part 1916).

These zones and base flood elevations, together with the flood plain management measures required by § 60.3 (presently appearing at its former § 1910.3) of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed zone is located south of Route 27 and east of Smiley Bayou. The proposed 100-year flood elevations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Smiley Bayou	Downstream end of Route 27 Bridge over Smiley Bayou.	326
Smiley Bayou	South corporate limit of newly annexed area.	324

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: October 24, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-34204 Filed 11-5-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5731]

Proposed Base Flood Elevation Determinations for the City of Farmington, N. Mex., Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations as described below.

The proposed base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Department of Public Works, Farmington, New Mexico.

Send comments to: The Honorable Robert S. Culpepper, Mayor, P.O. Box 900, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations for the City of Farmington, New Mexico, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 66 (presently appearing at its former Section 24 CFR Part 1916).

These base flood elevations, together with the flood plain management measures required by § 60.3 (presently appearing at its former § 1910.3) of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevation for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
San Juan River	Approximately 1,000 ft downstream of confluence with Farmington Glade.	5236
	Approximately 1,500 ft upstream of confluence with La Plata River.	5219
La Plata River	Adjacent to La Rue Ave	5265
	Northernmost corporate limit	5280
Farmington Glade	Just downstream of El Paso Right-of-Way.	5450
	Northernmost corporate limit	5480

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: October 24, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-34203 Filed 11-5-79; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Assistant Secretary for Education

45 CFR Part 1501

Support for Improvement of Postsecondary Education

AGENCY: Office of the Assistant Secretary for Education, HEW.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Fund for the Improvement of Postsecondary Education proposes to revise two sections of the program's regulations. First, the eight program objectives, which have not been rewritten for four years, would be revised to solicit applications addressing more directly some of the most pressing current problems in postsecondary education. Second, a section on targeted competitions would be added to allow the Fund to use a variety of funding competitions to best meet these revised objectives.

DATES: Comments must be received on or before December 21, 1979. Because the Fund has already received extensive comment from the concerned public, the Fund does not believe it necessary to receive comment for more than 45 days.

ADDRESSES: Comments should be addressed to Russell Y. Garth FIPSE, Room 3123, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Comments will be available for public inspection at that address from 9:00 a.m. to 4:00 p.m., Monday through Friday (except Federal holidays).

FOR FURTHER INFORMATION CONTACT: RUSSELL Y. GARTH (202) 245-8091.

(Catalog of Federal Domestic Assistance Number 13.925, Fund for the Improvement of Postsecondary Education)

Dated: September 11, 1979.

Mary F. Berry,

Assistant Secretary for Education.

Approved: October 30, 1979

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Part 1501 of the Title 45 of the Code of Federal Regulations is amended as follows:

Section 1501.8 is revised as follows:

§ 1501.8 Comprehensive program objectives.

The Fund supports a wide range of projects which seek to improve postsecondary educational opportunities. The Fund particularly seeks preapplications and applications which address one or more of the following objectives:

(a) Quality programs for all postsecondary students: developing educational programs and services which allow currently enrolled students from groups which previously have been excluded from postsecondary educational participation to complete their educational goals;

(b) Professional education and employment for women and minorities: increasing access to postsecondary educational institutions at the graduate level and increasing employment opportunities within postsecondary educational institutions for these populations;

(c) The full-time worker as learner: developing new educational programs and services for workers;

(d) Active modes of learning: using educational processes such as internships, self-directed learning, group learning, and interactive electronic technologies, which allow learners to take greater responsibility for their own learning;

(e) Focus on knowledge and abilities: developing new or redefined curricular content and educational subject matter;

(f) Leadership for new educational circumstances: encouraging efforts to renew and carry-out the educational missions of individual institutions or systems of institutions and to establish more effective management of postsecondary educational institutions.

Preapplications and applications which do not fit into these general objectives are also eligible, if they address significant problems in postsecondary education.

(20 U.S.C. 1221d)

Section 1501.9 is added to read as follows:

§ 1501.9 Targeted competitions.

The Fund may also conduct targeted competitions directed at one or several of the program objectives or at an aspect or portion of a program objective set out in § 1501.8. For some of these competitions, the Fund may not require preapplications. The targeted competitions may include for example:

(a) Special Focus competitions, in which the Fund supports projects within a specific problems area;

(b) National project competitions, in which the Fund supports a number of projects focused on a specific problem area and, in some cases, using a similar type of solution. Recipients must collaborate with other National Project recipients to disseminate the results; or

(c) Network competitions, in which the Fund supports projects which bring together practitioners in a specific area of concern in a continuing association to improve practice in that area.

(20 U.S.C. 1221d)

[FR Doc. 79-34294 Filed 11-5-79; 8:45 am]

BILLING CODE 4110-88-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 410

Notice of Intent To Prepare an Environmental Impact Statement on the Proposed Uniform Procedures for Compliance With the Fish and Wildlife Coordination Act, and Notice of Scoping Meeting

AGENCY: Department of the Interior; Department of Commerce.

ACTION: Notice of intent to prepare an environmental impact statement on the proposed uniform procedures for compliance with the Fish & Wildlife Coordination Act; meeting.

SUMMARY: This notice advises the public that the Fish and Wildlife Service of the Department of Interior, in cooperation with the National Oceanic and

Atmospheric Administration, Department of Commerce, is preparing an Environmental Impact Statement (EIS) on the promulgation of regulations for uniform Federal compliance with the Fish and Wildlife Coordination Act (FWCA). It also notifies the public that the proposed rules published in the May 18, 1979, Federal Register (44 FR 29300) are being redrafted in response to public and other agency comments and will be republished as proposed rules at the same time the draft EIS is made available.

As required by the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7), a scoping process is hereby initiated in order to obtain suggestions and information from interested public and private entities on the scope of issues to be addressed in the EIS. A scoping meeting is announced.

DATES: Written comments on the recommended scope of the EIS should be received by December 6, 1979. A scoping meeting will be held in Washington, D.C. on November 19, 1979, at 9:00 a.m.

ADDRESSES: Written comments should be addressed to: Michael J. Spear, Associate Director, Fish and Wildlife Service, United States Department of the Interior, Washington, D.C. 20240.

The public meeting on November 19, 1979, will be held in the North Penthouse (Studio, Room 8069), Interior Building, 18th & C Streets, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard K. Robinson or Thomas J. Bond, Fish and Wildlife Service, United States Department of the Interior, Division of Ecological Services, Washington, D.C. 20240. Phone (202)343-7292.

Persons planning to attend the meeting should notify the above.

SUPPLEMENTAL INFORMATION: The Department of Interior, in cooperation with the Department of Commerce, will prepare an EIS on regulations to establish uniform procedures for implementing the FWCA. The U.S. Fish and Wildlife Service, for Interior, with assistance from the National Oceanic and Atmospheric Administration, for Commerce, is in the process of drafting the EIS at the same time that the May 18, 1979, proposed rules are being redrafted. Other agencies, private organizations and individuals are encouraged to provide comments and suggestions which would aid in determining the desirable scope of an EIS. All comments previously provided are being considered in redrafting the proposed regulations.

On September 29, 1978, a Notice of Intent to Propose Rules was published in the Federal Register, (43 FR 44870), and a total of 29 comments was received and considered. During the period immediately before and after publication of the Federal Register Notice the drafting team met for discussions with regional and field personnel of the Fish and Wildlife Service and National Marine Fisheries Service on at least four occasions. They met (in some cases on several occasions) with the Corps of Engineers, Bureau of Reclamation, Soil Conservation Service, Nuclear Regulatory Commission, Federal Energy Regulatory Commission, Rural Electrification Administration, Bureau of Land Management, Council on Environmental Quality, Department of the Air Force, Economic Development Administration, Forest Service, Farmers Home Loan Administration, Department of Transportation (including Coast Guard, Federal Highway Administration, and Federal Aviation Administration), Environmental Protection Agency, Department of Navy, U.S. Geological Survey, Office of Surface Mining, The Water Resources Council, and others. Since these rules were being prepared under the auspices of the Environmental Statutes Task Force to implement portions of the President's Water Policy, the agencies making up the Task Force were also involved. Other than those already named, these included Tennessee Valley Authority, Advisory Council on Historic Preservation, Heritage Conservation and Recreation Service, Bureau of Indian Affairs, Department of Housing and Urban Development, and Office of Coastal Zone Management.

Some of the meetings preceded the drafting of the regulations, and others followed. In many cases, changes were made to accommodate expressed viewpoints. A large number of iterations—twenty or more—resulted from this extensive interplay of ideas.

Further agency and public participation was invited through six public hearings held at various locations throughout the United States, as announced in the Federal Register of June 8, 1979, (44 FR 33127).

After these hearings and extended review periods, all hearing records and approximately 450 written comments were reviewed and carefully evaluated.

On August 17, 1979, the administrative record was reopened for the purpose of receiving public comment on the limited question whether the proposed rules portended significant effects upon the quality of the human environment (44 FR 48305). A public hearing was conducted on September 14, 1979. Four persons testified at the hearings and there were 17 written responses to the Federal Register Notice. The Departments of the Interior and Commerce have since decided to prepare an EIS on the proposed rulemaking, and to repropose the revised rules in conjunction with the release of the draft EIS.

The rules should eliminate many of the procedural difficulties that have prevented effective implementation of the FWCA. The existing have prevented effective implementation of the FWCA. The existing environment is a process where attempts are being made by wildlife and action agencies to accomplish the consultation and equal consideration requirements of the FWCA without uniform procedures. The environment to be examined in the EIS is one in which:

1. Consultation often does not take place until project planning is nearly complete;

2. Too many issues regarding the adequacy of consideration given wildlife values are not being resolved at the field level and are being elevated to higher agency levels;

3. The interagency consultation process often takes an unduly long time;

4. There is no orderly process to resolve disputes between the wildlife agencies and most Federal construction and authorizing agencies;

5. Attempts to resolve differences between construction and wildlife agencies are often not made until project planning is completed, or nearly so, and many commitments have been made;

6. Rationales not germane to the issue are often used to argue against implementation of mitigation measures;

7. Field personnel of concerned agencies often do not understand the requirements and limitations of the FWCA; and,

8. The public is often confused as to which agency has authority to implement conservation measures.

Uniform procedures and information can correct most of these problems. The regulations are being redrafted to do this. The major impacts of the regulations to be analyzed in the EIS will be to:

1. Provide a framework where consultation between the wildlife agencies and Federal construction and authorizing agencies can take place early in the planning process;

2. Provide guidance so that most issues regarding the adequacy of consideration given wildlife values can be resolved expeditiously at the field level;

3. Provide for the consultation process with the wildlife agencies to take place within a prescribed period;

4. Provide an orderly process for resolving disputes between the wildlife agencies and Federal construction and authorizing agencies in a more timely manner;

5. Explain the types of rationale that may be used under the FWCA to weigh the desirability of wildlife conservation measures;

6. Provide concise descriptions of the requirements and limitations the FWCA; and,

7. Make it easier for the public to work with the various Federal agencies throughout the planning process.

The regulations are being designed to improve coordination, and it is hoped that indirectly this will lead to agency decisions that include more measures for fish and wildlife conservation. The FWCA and these rules describe a process of providing recommendations to Federal agencies undertaking or authorizing water-related projects, and provide guidelines for their consideration as part of their public interest reviews. The process of these reviews, and wildlife conservation measures which other agencies adopt as a result thereof, can have effects upon the quality of the human environment—social, economic and physical. However, the casual connection between the FWCA process and these effects is difficult to trace and predict. This is because the regulations would minimize delays attributable to the FWCA consultation process, and because action agency decisions to adopt wildlife conservation measures may not be attributable, or entirely so, to wildlife agency input. Indeed, such measures may be adopted because of other, intervening factors unrelated to the FWCA process, or may never be implemented, if adopted, due to other factors. The following alternatives are being analyzed, and will be discussed in the EIS:

1. Formulation of regulations similar to those proposed in the May 18, 1979, Federal Register (44 FR 98, pg. 29300), which will provide guidance for uniform compliance with the FWCA, and which direct each Federal agency subject to the Act to prepare implementing procedures (proposed action).

2. Request that the President rescind his directive, deferring to the NEPA process, and continuing the present diversity of Federal agency methods of complying with the FWCA (no action).

3. Request that the President modify his directive to allow use of other methods to obtain uniform compliance with the FWCA such as:

(a) Passage of special legislation;

(b) Issuance of non-binding guidelines;

(c) Preparation of detailed regulations obviating the need for individual agency procedures;

(d) Amend NEPA rules to incorporate specific requirements of the FWCA; or,

(e) Alternative ways of dealing with specific issues addressed, in the May 18, 1979, proposed rulemaking.

Comments made as part of this scoping process will be carefully considered if addressed to the following:

1. The existing environment attributable to the FWCA consultation process, and how it should be described;

2. Reasonable alternatives to carrying out the Presidential directive, and reasonable alternatives to specific provisions of the May 18, 1979, proposed rulemaking.

3. Effects of the FWCA process and implementing procedures upon the human environment, and how they should be displayed; or,

4. Casual factors ameliorating those effects.

The primary author of this Notice is Eugene Whitaker, fish and wildlife biologist, U.S. Fish and Wildlife Service, phone (202)343–5685.

Dated this 31st day of October, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-34161 Filed 11-5-79; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 44, No. 216
Tuesday, November 6, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

[Docket 34681]

Interim Essential Air Transportation At Plattsburgh, Massena, Watertown, Saranac Lake/Lake Placid, Ogdensburg, N.Y. and Rutland, Vt., Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on November 30, 1979, at 10 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, *on or before November 21, 1979,* together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., October 31, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-34240 Filed 11-5-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-10-200; Dockets 36426, 36434, and 36783]

Mississippi Valley Airlines, Inc.; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of October, 1979.

Thirty day notice of Mississippi Valley Airlines, Inc. of intent to terminate service at Winona, Minnesota (Docket 36426), ninety day notice of Republic Airlines, Inc. of intent to terminate service at Winona, Minnesota (Docket 36434), application of the city of Winona, Minnesota for hyphenation with La Crosse, Wisconsin (Docket 36783); Order to show cause.

By Order 79-9-101, September 20, 1979, the Board required Mississippi Valley Airlines (MVA), a registered Part 298 commuter air carrier,[1] to continue to serve Winona, Minnesota, for an additional 30-day period (until October 20), beyond its notice effective date of September 20.[2] MVA was the only carrier serving Winona and had been doing so for several years under a replacement agreement with Republic Airlines.[3] The Board's action was taken in response to objections filed by the City of Winona and the State of Minnesota.[4]

In the order we indicated that our staff had been contacted informally by Winona civic officials about the possibility of hyphenating Winona with La Crosse, Wisconsin, which is 27 road miles to the east, with service to be provided Winona through the La Crosse airport. Most of Winona's air service to Minneapolis/St. Paul and Chicago was already being provided by MVA through connecting flights at La Crosse. We stated that, should the city agree to accept hyphenated service, it would not forfeit its right to essential air service if it found, in the future, that service through the La Crosse airport was unsatisfactory.

On October 3, 1979, the City of Winona filed an application with the Board requesting that we amend the certificate of public convenience and necessity issued to Republic so as to consolidate Winona and La Crosse, with service to be provided through the La Crosse Airport. The city cites the proximity of La Crosse and the fact that Republic and MVA provide service between La Crosse and Minneapolis/St. Paul and La Crosse and Chicago, the principal destinations or connecting points for Winona travelers. The application states further that the City Council of Winona believes that, for the foreseeable future, Winona's essential air transportation needs can be met through hyphenation with La Crosse, with the understanding that the city was not relinquishing its right to essential air service at Winona if service through La Crosse proved unsuitable.

As we stated in Order 79-9-101, hyphenating Winona with La Crosse is a reasonable course at this time, and we will do so since the community desires to be served in this fashion. However, in order to accomplish this, we must amend Republic's certificate. Therefore, this order initiates that action by asking interested parties to show cause why we should not amend the carrier's certificate.

While our show cause order is pending, we will not require MVA to continue its Winona-Minneapolis/St. Paul operations. Therefore, we immediately relieve MVA of its obligation to serve Winona and release Republic and MVA of their responsibility for assuring service at Winona.

Having taken these steps, which we believe are in full agreement with the community's request, we wish to assure the community once again that we believe they are entitled to essential air service at their own community, and should they request us to reinstitute such service, we will take the steps necessary to secure it.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order hyphenating the point Winona, Minnesota, with the point La Crosse, Wisconsin, on Route 86 of Republic Airlines' certificate of public convenience and necessity, with the point thereafter to be known as La Crosse, Wisconsin/Winona, Minnesota;

2. Any interested persons having objections to the issuance of an order making final the proposed hyphenation shall file in Dockets 36426, 36434 and 36783 not later than November 21, 1979, and serve upon all parties listed in paragraph 8, a statement of objections together with any supporting documents; answers to objections shall be filed no later than December 3, 1979;

3. If timely and supported objections are filed, we will accord full consideration to the matters or issues raised before taking further action;[5]

[1] Mississippi Valley operates as a certificated carrier in some markets and as a commuter airline in others. Winona is not a certificated point on MVA's system.

[2] Order 79-10-96, October 17, 1979, issued under delegated authority, extended Mississippi Valley's service obligation until November 19, 1979, or until issuance of the instant order, whichever occurs first.

[3] See Order 69-10-121, October 24, 1969, and 75-9-55, September 18, 1975.

[4] The Board required MVA to continue its Winona-Minneapolis/St. Paul operations only. Since the service between Winona and Chicago had been virtually unused by passengers, MVA was permitted to suspend these flights.

[5] Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

4. In the event no objections are filed, we will deem all further procedural steps to have been waived, and we may proceed to enter an order in accordance with our proposal contained herein;

5. We find that, pending the outcome of our show cause proceeding, essential air service to Winona can be provided through the airport at La Crosse, Wisconsin, with the assurance that the city of Winona may request service to its own airport if such an arrangement proves unsatisfactory to Winona's air service needs;

6. We relieve Mississippi Valley Airlines of its obligation to continue to serve Winona;

7. We release Mississippi Valley Airlines and Republic Airlines from their responsibility for assuring that continuous air transportation is provided Winona; and

8. We will serve a copy of this order on the Mayor of Winona; the Mayor of La Crosse; the Airport Manager of Winona; the Airport Manager of La Crosse; the Assistant Commissioner of the Minnesota Department of Transportation, Aeronautics Division; the Wisconsin Department of Transportation; the Postmaster General; Mississippi Valley Airlines; and Republic Airlines.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board.[6]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-34242 Filed 11-5-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36115]

South Pacific Island Airways Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on December 20, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, Washington, D.C., before the undersigned Administrative Law Judge.

Board Order 79-7-63 determined the evidence request with which the applicant was to comply prior to the hearing. Since no person has objected thereto nor commented thereon by the date set therefor, the applicant will comply with that evidence request (attached as an appendix to the Order). It will circulate to each party and to the Judge one copy of its exhibit materials on or before December 30, 1979 (delivery date). All other parties will circulate rebuttal exhibit material, if any, on or before December 14, 1979 (delivery date). At time of hearing, the parties will submit three (3) fully corrected copies of all exhibit materials at the time said exhibits are offered into the record.

Dated at Washington, D.C., October 31, 1979.

Frank M. Whiting,

Administrative Law Judge.

[FR Doc. 79-34241 Filed 11-5-79; 8:45 am]

BILLING CODE 6320-01-M

[6] All members concurred.

COUNCIL ON ENVIRONMENTAL QUALITY

Progress Report on Agency Procedures Implementing Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions" (January 4, 1979)

November 1, 1979.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only: Publication of Second Progress Report on Agency Procedures Implementing Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions".

SUMMARY: On January 4, 1979, President Carter issued Executive Order 12114 entitled "Environmental Effects Abroad of Major Federal Actions." Executive Order 12114 requires all federal agencies taking major federal actions outside the U.S. which are encompassed by and not exempted from the Order, to have in effect procedures implementing the Order within 8 months after January 4, 1979 (i.e., by September 4, 1979). The Order requires agencies to consult with the Council on Environmental Quality and the Department of State before putting their implementing procedures in effect. The Council has previously published certain explanatory documents concerning implementation of E.O. 12114 (44 FR 18722, March 29, 1979). On September 26, 1979 the Council published its first progress report on agency procedures implementing the Executive Order (44 FR 55410). The purpose of this second progress report is to provide an update on where affected agencies stand in this process.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006; (202) 395-5750.

Second Progress Report on Agency Procedures Implementing E.O. 12114

The progress report lists federal agencies in two categories. In Category 1 are agencies that have published proposed or final procedures implementing Executive Order 12114. Category 2 lists agencies that have prepared draft procedures or are in the process of developing such procedures, and contains an estimated time such procedures will be published in the Federal Register.

Category 1—Federal Agencies That Have Published Proposed or Final Procedures Implementing E.O. 12114

Department of Defense—Final Procedures issued April 12, 1979 (44 FR 21786).

Export-Import Bank of the United States—Final [1] Procedures issued August 30, 1979 (44 FR 50813).

Overseas Private Investment Corporation—Final [1] Procedures issued August 31, 1979 (44 FR 51385).

Department of Commerce, National Oceanic and Atmospheric Administration—Proposed Revised NOAA Directive Implementing NEPA and E.O. 12114, October 22, 1979 (44 FR 60779).

Department of Energy—Proposed Guidelines issued September 6, 1979 (44 FR 52146).

Department of State—Foreign Affairs Manual Circular No. 807A, Procedures Implementing E.O. 12114 (except nuclear actions) (at the Federal Register).

Agency for International Development—Proposed Environmental Regulations, October 1, 1979 (44 FR 56378).

Department of Transportation—See NEPA procedures (DOT Order 5610.1C) issued Oct. 1, 1979 (44 FR 56420), Paragraph 16.

National Aeronautics and Space Administration—See Final NEPA procedures Section 1216.321 issued July 30, 1979 (44 FR 44490-44491).

Category 2—Federal Agencies Scheduled To Publish Procedures Implementing E.O. 12114 in the Near Future

Department of State—Draft "Unified Procedures Applicable To Major Federal Actions Relating To Nuclear Activities Subject To Executive Order 12114" awaiting final approval.

Department of Commerce—Draft Proposed Procedures awaiting final approval.

[1] Although not published in proposed form for public review and comment, the preamble provides an opportunity for public comment on final procedures.

Environmental Protection Agency—Draft Procedures implementing E.O. 12114 (to be incorporated as Subpart J to EPA NEPA regulations) awaiting final approval.

Department of Agriculture—Amendments (containing procedures implementing E.O. 12114) to departmental NEPA procedures awaiting final approval.

Department of Treasury—Draft Procedures implementing E.O. 12114 are under preparation. These procedures are expected to be published in the near future.

Department of the Interior—Draft Procedures implementing E.O. 12114 are under preparation. These procedures are expected to be published in the near future.

November 1, 1979.

Nicholas C. Yost,

General Counsel.

[FR Doc. 79-34254 Filed 11-5-79; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., 26 November 1979 in Rm. 3D318 and from 9:30 a.m. to approximately 1:00 p.m., 27 November 1979 in Room 1E801 #5, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review recommendations made at the 1979 Fall Meeting, discuss current issues relevant to women in the Services, and plan the methods and structures to be used by the Committee in the upcoming year.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Captain Mary J. Mayer, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs, and Logistics), Rm. 3D322, The Pentagon, Washington, D.C. 20301, telephone 202-697-5655 no later than 9 November 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

November 1, 1979.

[FR Doc. 79-34205 Filed 11-5-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Case No. 52101-6085-01-77 and ERA Case No. 52101-6085-02-77]

R. M. Schahfer Units 16A and 16B; Northern Indiana Public Service Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the Northern Indiana Public Service Company R. M. Schahfer Units 16A and 16B as Existing Facilities.

SUMMARY: On June 4, 1979, Northern Indiana Public Service Company (NIPSCO) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify R. M. Schahfer Units 16A and 16B as existing facilities pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA).

ERA has completed its analysis of NIPSCO's request and has determined that NIPSCO has satisfactorily demonstrated that it would suffer a substantial financial penalty because NIPSCO had expended, in nonrecoverable outlays, in excess of 25 percent of the total projected cost as of November 9, 1978, for each of the R. M. Schahfer units within the meaning of § 515.6 of the Revised Interim Rule.

ERA has determined that NIPSCO's R. M. Schahfer Units 16A and 16B are "existing" facilities and are now subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461. Phone: (202) 634-2170.

James W. Workman, Acting Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3128, Washington, D.C. 20461. Phone: (202) 254-7442.

G. Randolph Comstock, Deputy Assistant General Counsel for Coal Regulations, Office of the General Counsel, Department of Energy, 1000 Independence Ave., SW., Rm. 6G-087, Washington, D.C. 20585. Phone: (202) 252-2967.

Robert L. Davies, Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128L, Washington, D.C. 20461. Phone: (202) 634-6557.

SUMMARY INFORMATION: (1) On June 4, 1979, Pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, NIPSCO requested that ERA classify NIPSCO's R. M. Schahfer Units 16A and 16B as "existing" facilities. On September 26, 1979, ERA published a summary of NIPSCO's request for classification in the Federal Register and requested comments by interested persons on or before October 17, 1979. ERA has not received any comments in response to the notice published by ERA in the Federal Register on September 26, 1979.

(2) ERA has analyzed the material submitted by NIPSCO applicable to the R. M. Schahfer Units 16A and 16B and on the basis of such analysis has determined that NIPSCO has satisfactorily demonstrated that it would suffer a substantial financial penalty in excess of 25% of the total projected project cost as of November 9, 1978, for each of the R. M. Schahfer Units within the meaning of Section 515.6 of the Revised Interim Rule. A copy of ERA's Summary of Analysis dated October 15, 1979, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C. October 31, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-34154 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-79-006; OFC Case No. 61005-9021-01-11, 61005-9021-02-11 and 61005-9021-03-11]

Powerplant and Industrial Fuel Use; Acceptance of Petitions for Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemptions Pursuant to the Interim Rules Implementing the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On September 17, 1979, the Consolidated Rail Corporation (ConRail)

filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting three major fuel burning installations (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibits the use of petroleum and natural gas as a primary energy source in new MFBI's. Criteria for petitioning for exemptions from the prohibitions of FUA are published at 44 FR 28530 (May 15, 1979) and at 44 FR 28950 (May 17, 1979) (Interim Rules). The MFBI's for which the petition is filed are three petroleum and natural gas-fired (hereafter, oil/gas-fired), leased packaged boilers, rated at 122,000 pounds of steam per hour each, installed at ConRail's Cos Cob, Connecticut generating facility. Under § 505.15 of the Interim Rules, ConRail has requested a temporary public interest exemption for the operation of each of the units until the Cos Cob facility is finally closed down in June 1981.

Pursuant to Part 515 of the Revised Interim Rule—Transitional Facilities (44 FR 17464, March 21, 1979), ConRail submitted a request on May 8, 1979, that the three rental boilers be classified as existing facilities so that they would not be subject to the statutory prohibitions applicable to new boilers under FUA. That request was not accepted by ERA as the eligibility requirement of §515.10 of the Revised Interim Rule was not met by ConRail. However, the circumstances related below in the "Supplementary Information" section (made known by ConRail in the aforementioned request, by other interested persons through correspondence, and at a conference held on March 9, 1979, at ConRail's request) required the operation of the three oil/gas-fired boilers by June 15, 1979. Those circumstances dictated the need to provide interim relief to ConRail until a petition for appropriate exemptions for the units could be filed and acted upon. Accordingly, ERA's Acting Assistant Administrator for Fuels Regulation advised ConRail by letter dated June 18, 1979, that the Office of Fuels Regulation would not recommend that any action be taken against it for operation of the boilers for 90 days provided that, prior to the expiration of that period, an acceptable petition for exemptions for the three units were filed with ERA. That action takes cognizance of the administrative lead-time needed for processing any such exemption petitions which would effectively preclude ERA's acting upon a petition from ConRail in time to meet ConRail's required operational deadline. Incident to acceptance of this petition, the Office of Fuels Conversion (which now has the responsibility for this action) has notified ConRail that ERA's no action recommendation of June 18, 1979, is extended until an order granting or denying the petition is issued by ERA.

ConRail requested that ERA waive the filing fee, the Fuels Decision Report, and the Fuels Mixture Demonstration requirements of the public interest exemption as they pertain to the Cos Cob oil/gas-fired boilers. As provided for in §§ 501.23(c)(4)(ii) and 505.15(a) of the Interim Rules, ERA has granted these requested waivers based upon the following considerations:

ConRail receives a fixed management fee for the operation of the Cos Cob facility and the commuter passenger service between New Haven and New York City from the Connecticut Department of Transportation (CDOT) and the New York Metropolitan Transportation Authority (MTA) and is fully reimbursed for all operational losses. As these two agencies are supported by public funds, payment of a filing fee and the costs of preparing the Fuels Decision Report and the Fuels Mixture Demonstration would fall upon the taxpayers of Connecticut and New York. Additionally, in view of the unique circumstances and the short period for which the exemptions are requested, ERA determined that the analyses required in the Fuels Decision Report and the Fuels Mixture Demonstration would be neither cost effective nor meaningful.

FUA imposes statutory prohibitions against the use of natural gas and petroleum as a primary energy source by new MFBI's which consist of a boiler. ERA's decision in this matter will determine whether under the Act and the Interim Rules, it is in the public interest to permit ConRail to operate the three boilers with petroleum and natural gas as their fuels until June 30, 1981.

ConRail did not include with its petition the Compliance Plan required for all temporary exemptions by Section 505.9(b) of the Interim Rules. ERA notified ConRail by letter of this omission but advised that if ERA found the petition to be otherwise complete, acceptance of the petition would not, under the circumstances, be delayed pending receipt of the Compliance Plan. ERA waived the § 505.15(d) requirement for simultaneous submission of a Compliance Plan in recognition of the fact that the Consent Judgment, provided as an exhibit to the petition, and to which ConRail is a party, demonstrated ConRail's obligation to ultimately cease operation of the Cos Cob facility. Although the eventual closing of the Cos Cob plant would be the ultimate demonstration of compliance, a description of the events leading to the stated June 1981 closing must be set out in an acceptable Compliance Plan before the petition can be acted upon.

Accordingly, ERA found ConRail's petition otherwise adequate and, in accordance with § 501.3(c) of the Interim Rules, ConRail was notified by letter dated October 17, 1979, that its petition is accepted, subject to the submission of a Compliance Plan as required by § 505.15(d) of the Interim Rules. ERA retains the right to request additional relevant information from ConRail at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section, below.

The Acting Assistant Administrator for Fuels Conversion has been advised that upon receipt by ERA of an acceptable Compliance Plan for ConRail's Cos Cob facility, and based upon its present analysis of the information contained in the exemption petition, the ERA staff is prepared to issue, pursuant to the provisions of Section 501.65 of the Interim Rules, a Notice of Availability of its Tentative Staff Determination that would recommend granting ConRail's petition for temporary public interest exemptions.

In accordance with Section 763(1) of FUA, the grant or denial of any temporary exemption under the Act is not deemed to be a major Federal action for purposes of Section 102(2)(C) of the National Environmental Policy Act of 1969. Therefore, in connection with this petition for temporary exemptions, ERA is not required to conduct an environmental analysis of the impacts of its decision.

As provided for in Sections 701 (c) and (d) of FUA and § 501.31 of the Interim Rules, interested persons are invited to submit written comments in regard to this matter, and under § 501.33, any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before, December 21, 1979. A request for a public hearing must also be made within this same 45 day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Economic Regulatory Administration, Case Control Unit, Box 4629, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

Docket Number ERA-FC-79-006 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, (Office of Public Information) Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone (202) 634-2170.

Constance Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 254-7814.

G. Randolph Comstock, Deputy Assistant General Counsel for Coal Regulations, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G-087, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2967.

Robert L. Davies, Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 634-6557.

SUPPLEMENTARY INFORMATION: ERA published in the Federal Register on May 15 and 17, 1979, its Interim Rules implementing the provisions of Title II of FUA. The Act prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's and powerplants unless an exemption to do so has been granted by ERA.

The Cos Cob, Connecticut facility generates the electric power for the operation of commuter and Amtrak trains between New Haven, Connecticut and New York City, New York. The facility, owned by the Penn Central Transportation Company (Penn Central), is leased to the CDOT and operated by ConRail. Under contract with CDOT and MTA, the commuter passenger service between New Haven and New York City is operated by ConRail for a fixed management fee and ConRail is fully reimbursed for all operational losses by CDOT and MTA. The electrictiy generated at the facility and employed on the rail line between New Haven and New York City is 25-cycle instead of 60-cycle power now standard on the North American Continent. In April 1978, ConRail commenced conversion of the rail line's signal control and traction systems to the standard 60-cycle power. Upon completion of that project, electricity to serve the rail line will be purchased from a local utility and the Cos Cob powerplant will be permanently closed.

The Cos Cob facility has for years created an air pollution problem in the town of Greenwich, Connecticut, where the plant is located, and frequent breakdowns of the antiquated equipment occur. In 1972, litigation was initiated by Greenwich seeking relief from the emission of air pollutants from the facility. Subsequently, when Greenwich's suit proved unsuccessful, the Environmental Protection Agency (EPA) adopted the Connecticut environmental regulations as Federal regulations and issued an order to Penn Central and CDOT to comply with those regulations by phasing out the Cos Cob Plant. In 1976, the United States Attorney, District of Connecticut, on behalf of the United States, brought suit against CDOT, ConRail and Penn Central seeking enforcement of the EPA order. The parties to the suit joined in a Consent Agreement in November 1978, which was signed into judgment by the U.S. District Court, District of Connecticut, on May 2, 1979. The Consent Judgment, in part, orders:

- The installation and operation by June 15, 1979 of oil-fired packaged boilers at the Cos Cob plant;
- The cessation of operation of two older coal-fired units and the restricted operation of a third coal-fired unit, all of which have been found in violation of the Clean Air Act;
- The complete shutdown of the Cos Cob powerplant upon completion of the conversion of the train signal control system and the traction system of the rail line between New Haven, Connecticut and New York City, commenced in April 1978; and
- The continued performance of the responsibilities of the New Haven Suburban Passenger Train Service Agreements of October 27, 1970.

The MFBI's for which the exemptions are requested are three leased packaged boilers rated at 122,000 pounds of steam per hour each. ConRail states in its petition that the three boilers can readily convert to burn as their primary energy source either No. 2 fuel oil or natural gas. ConRail states that it has obtained enough natural gas to fuel one of the boilers and anticipates that, by April 1980, it will enter into agreements to obtain a supply of natural gas sufficient to fuel all three boilers. ConRail indicates that when sufficient natural gas is available, it will be used as the primary energy source for the three units, and that No. 2 fuel oil will be used only when natural gas is not available.

Section 505.15 of the Interim Rules provides that a temporary public interest exemption may be granted if the petitioner can demonstrate to the satisfaction of ERA that it is unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances, during the period for which the exemption is requested, but will be capable of compliance at the end of the proposed exemption period; and that the granting of the petition would be in accord with the purposes of the Act and would be in the public interest.

ConRail's petition for temporary public interest exemptions addresses the necessity for the operation of the three leased oil/gas-fired packaged boilers until completion of the conversion project in June 1981. In demonstrating that it is unable to comply with the prohibitions of the Act, except in extraordinary circumstances, ConRail contends that the operation of the three oil/gas-fired packaged boilers and the cessation of the full time operation of the coal-fired units is required by the Consent Judgment. To comply with FUA and at the same time, to meet its obligation to operate the commuter train service, ConRail asserts that it would have to operate the three coal-fired boilers full time, which would place it in violation of the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and in contravention of the Consent Judgment. ConRail further contends that, given the short-term requirement to sustain operation of the facility until completion of the conversion project and the immediate need to alleviate the pollution caused by the full-time operation of the old coal-fired units, modifying or replacing the coal-fired units to reduce the pollution is not a practicable solution from a cost and time-to-construct basis. ConRail also asserts that the rectification of the increasing unreliability of the commuter train operations due to frequent outages of the old coal-fired units could not be accomplished by the modification of those coal-fired boilers.

In demonstrating that, upon expiration of the requested temporary exemptions, it would be in compliance with the Act, ConRail offered as evidence the Consent Judgment of the United States District Court, District of Connecticut, signed May 2, 1979, (Civil No. B 76-282—U.S.A., Plaintiff, v. The Connecticut Department of Transportation, The Consolidated Rail Corporation and the Penn Central Transportation Company, Defendants). ConRail contends it is bound by the Consent Judgment to permanently close the Cos Cob facility upon completion of the conversion project, and by such closing, the burning of petroleum and natural gas at the facility will have ceased.

ConRail contends that granting of temporary exemptions to permit the operation of the three oil/gas-fired packaged boilers until completion of the conversion project will be consistent with the purposes of the Act and in the

public interest. Furthermore, ConRail states that the exemptions will allow it to carry out the provisions of the Consent Judgment, that the citizens of Greenwich will realize immediate relief from the severe pollution of their air, and that the unreliability of the commuter passenger service will be thereby eliminated.

ERA has determined that, except for a Compliance Plan, the petition of ConRail, as filed, is adequate in accordance with the Interim Rules and ConRail was notified of ERA's acceptance of its petition by letter dated October 17, 1979. For the aforementioned valid reasons, ERA waived, for the purposes of determining acceptability of the petition only, the requirement for simultaneous submission of a Compliance Plan as required by § 505.15(d) of the Interim Rules. However, completion of ERA's analysis of ConRail's petition and the issuance of a final determination is contingent upon ConRail's timely submission of an acceptable Compliance Plan. ERA retains the right to request any other additional relevant information from ConRail at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. As set forth in § 501.3(g) of the Interim Rules, the acceptance of the petition by ERA does not constitute a determination that ConRail is entitled to the exemptions requested.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: ERA, Room B-110, 2000 M Street, NW., Washington, D.C., Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C. on October 31, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-34209 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-79-005; OFC CASE No. 61004-9018-05-11]

Powerplant and Industrial Fuel Use; Acceptance of Petition For Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption Pursuant to the Interim Rules Implementing the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On September 17, 1979, Air Products and Chemicals, Incorporated (Air Products) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting a major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibits the use of petroleum and natural gas as a primary energy source in new MFBI's. Criteria for petitioning for exemptions from the prohibitions of FUA are published at 44 FR 28530 (May 15, 1979) and at 44 FR 28950 (May 17, 1979) (Interim Rules). The MFBI for which the petition is filed is a packaged boiler installed at Air Products' Calvert City, Kentucky chemicals plant. The boiler has a designed heat input rate of 86 million Btu's per hour and is capable of burning either petroleum or natural gas. Air Products has requested a five-year temporary exemption for the unit based upon the future use of synthetic fuels under § 505.14 of the Interim Rules.

Prior to the filing of this petition, Air Products, through correspondence with and at a conference conducted by ERA at Air Products' request on February 26, 1979, made known to ERA the necessity for it to operate the petroleum and natural gas-fired (hereafter, oil/gas-fired) packaged boiler in May and June of 1979 during successive shutdowns of its two existing coal-fired boilers for installation of new air pollution control equipment. Air Products related that the installation of the new air pollution control equipment on the coal-fired boilers had to be accomplished by July 1, 1979, in compliance with an Agreed Order executed with the Kentucky Department of Natural Resources and Environmental Protection. In consideration of those circumstances, ERA's Acting Assistant Administrator for Fuels Regulation advised Air Products by letter dated June 18, 1979, that the Office of Fuels Regulation would not recommend that any action be taken against it for operation of the oil/gas-fired boiler for 90 days provided that, prior to the expiration of that period, an acceptable petition for exemption were filed with ERA. That action takes cognizance of the administrative lead-time needed for processing any such exemption petition which would effectively preclude ERA's acting upon a petition in time to meet Air Products' required operational date.

FUA imposes statutory prohibitions against the use of natural gas and petroleum as a primary energy source by new MFBI's which consist of a boiler. ERA's decision in this matter will determine whether the packaged boiler will qualify for the requested temporary exemption based upon future use of synthetic fuels.

ERA has determined that the petition of Air Products is adequate in accordance with the Interim Rules. Pursuant to § 501.3(c) of the Interim Rules, ERA notified Air Products by letter dated October 17, 1979, that its petition, as filed, is accepted. ERA retains the right to request additional relevant information from Air Products at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the supplementary information section, below.

In accordance with Section 763(1) of FUA, the grant or denial of any temporary exemption under the Act is not deemed to be a major Federal action for purposes of Section 102(2)(C) of the National Environmental Policy Act of 1969. Therefore, in connection with this petition for a temporary exemption, ERA is not required to conduct an environmental analysis of the impacts of its decision.

As provided for in Sections 701 (c) and (d) of FUA and §§501.31 and 501.33 of the Interim Rules, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before December 21, 1979. A request for public hearing must also be made within this same 45 day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Economic Regulatory Administration, Case Control Unit, Box 4629, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

Docket Number ERA-FC-79-005 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, D.C. 20461. Phone (202) 634-2170.

Constance Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 254-7814.

G. Randolph Comstock, Deputy Assistant General Counsel for Coal Regulations, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G-087, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-2967.

Robert L. Davies, Acting Assistant Administrator, Office of Fuels Conversion.

Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 634-6557.

SUPPLEMENTARY INFORMATION: ERA published in the Federal Register on May 15 and 17, 1979, its Interim Rules implementing the provisions of Title II of FUA. The Act prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's and powerplants unless an exemption to do so has been granted by ERA.

The MFBI for which the temporary exemption is requested is a packaged boiler having a designed heat input rate of 86 million Btu's per hour and is designed to burn either natural gas or No. 2 fuel oil. Air Products states that the boiler will be used to supply steam only when one or both of the coal-fired boilers at the Calvert City facility are shut down for scheduled inspection, maintenance or repairs and when emergency conditions require. Additionally, Air Products states that at some time in the future it may need to utilize the packaged boiler to meet peak steam requirements for production when such requirements exceed the normal, unconstrained operational capability of its two coal-fired boilers. However, Air Products does not expect such peak steam requirements to arise for the next few years.

Air Products states that the scheduled outages of the two coal-fired boilers are ordinarily planned for late spring through early autumn when it is expected that a supply of natural gas will be available for use in the packaged unit. During the period of the exemption therefore, Air Products states that it will use natural gas as the primary energy source in the packaged boiler with No. 2 fuel oil as a backup fuel when natural gas is unavailable.

Section 505.14 of the Interim Rule provides for a temporary exemption from the prohibitions of FUA based upon the future use of synthetic fuels. To qualify, a petitioner must demonstrate to the satisfaction of ERA its:

(1) Ability to comply with the applicable prohibitions imposed by the Act by the end of the proposed exemption period by the use of a synthetic fuel as a primary energy source in the MFBI, and

(2) Incapability to comply with the applicable prohibitions imposed by the Act by using a synthetic fuel in the MFBI before the end of the proposed exemption period.

In addressing its ability to comply with the first of the these requirements, Air Products points out that it is a principal member of the Joint Venture which is performing preliminary design and cost evaluation of a plant to demonstrate on a commercial scale the economical and technical feasibility of the solvent refined coal process (SRC-I) to produce solid and liquid fuel products from coal. Air Products contemplates that the Joint Venture, to be known as the International Coal Refining Company (ICRC), will contract with DOE for the design, construction and operation of an SRC-I demonstration plant to be located on the Green River, near Newman, Kentucky. The SRC-I demonstration program calls for initial startup processing of 6,000 tons of coal per day into synthetic liquid fuel.

To demonstrate that a synthetic fuel will be available for use in the packaged boiler at the end of the proposed exemption period, Air Products submitted letter agreements to purchase from the Joint Venture its requirements of synthetic liquid fuel for the packaged boiler up to the equivalent of 350 barrels of No. 2 fuel oil per day, commencing with the start-up of operation of the SRC-I demonstration plant in January 1984 and continuting through the currently planned 5 year demonstration period. The letter agreements also provide that Air Products will continue its purchase of the same quantity of synthetic liquid fuel for an additional period of up to 20 years following the end of the demonstration period.

In demonstrating its inability to comply with the Act's prohibitions during the period of the exemption by using a synthetic fuel in the packaged boiler, Air Products contends that synthetic fuels will not be commercially available from any other source prior to the start-up of the Joint Venture SRC-I demonstration plant in January 1984. In support of its contention, Air Products addressed the coal liquefaction technologies presently being reviewed by DOE and states that the timing for commercial demonstration is similar to, and most probably later than that for the Joint Venture's SRC-I process. Air Products also explored the following other synthetic fuel technologies and discussed them in its petition:

H-Coal. Air Products inquired into the potential commercial availability of H-Coal during the period 1980-1985 from the H-Coal pilot plant primarily sponsored by DOE at Catlettsburg, Kentucky. A letter from the DOE H-Coal Program Manager, attached to the petition, stated that a supply of H-coal of sufficient quantity to meet Air Products' needs is unlikely to be available from the pilot plant within the stated time frame.

High-Btu Coal Gasification. Air Products states that it was unable to locate a potential supply of synthetic natural gas produced from coal that would be commercially available prior to the availability of the Joint Venture's SRC-I liquids. It asserts that the only high-Btu coal gasification project currently underway in the West Kentucky-Illinous area is the COGAS project sponsored by the Illinois Coal Gasification Group (ICGG) and DOE. According to Air Products, the COGAS pilot plant is to be sited some 80 miles northwest of its Calvert City facility and Air Products contends that pipeline transportation over this distance to supply a small boiler that is operated for only a limited number of days per year would not be economically feasible. Further, Air Products states that the high-Btu synthetic natural gas produced at the pilot plant is not expected to be commercially available earlier than the SRC-I liquids from the Joint Venture. Additionally, Air Products understands that the output from the COGAS pilot plant is to be dedicated to the use of utility members of ICGG.

Medium-, Low-Btu Coal Gasification. Air Products states that it is unaware of any potential supply of medium- or low-Btu coal gas commercially available to its Calvert City facility. It acknowledges that it is technically feasible to manufacture medium-Btu coal gas on-site using the Lurgi gasification technology and to manufacture on-site, low-Btu gas using several commercially proven low pressure, fixed-bed coal gasification technologies. However, Air Products contends that, for a § 505.14 temporary exemption under the Interim Rules, the Act anticipates contractual arrangements for purchase of synthetic fuel between the petitioner and a supplier, and does not require that the petitioner invest directly in the synthetic fuel manufacture. Further, Air Products asserts that the investment in the necessary facilities for on-site generation of synthetic fuel for a boiler that is to be operated only on a limited basis would make such a project uneconomical.

The petition includes evidence in support of the requested exemption as specified in §§ 505.14(b) and 502.1 of the Interim Rules.

ERA has determined that the petition of Air Products, as filed, is adequate in accordance with the Interim Rules. Air Products was notified of ERA's acceptance of its petition by letter dated October 17, 1979. ERA retains the right to request any other additional relevant information from Air Products at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. In this connection, ERA anticipates that after its analysis of DOE's participation

in the SRC–I demonstration project, Air Products may be required to submit a revised Compliance Plan. As set forth in § 501.3(g) of the Interim Rules, the acceptance of the petition by ERA does not constitute a determination that Air Products is entitled to the exemption requested.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: ERA, Room B–110, 2000 M Street, NW., Washington, D.C., Monday–Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C. on 31 October, 1979.

Robert L. Davies,

Acting Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-34210 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

Mohawk Petroleum Corp., Inc.; Interim Remedial Order for Immediate Compliance

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Issuance of Interim Remedial Order for Immediate Compliance.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to issue an Interim Remedial Order for Immediate Compliance.

ISSUANCE DATE: October 12, 1979.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111, phone (415) 556–7200.

SUPPLEMENTARY INFORMATION: On October 12, 1979, the Office of Enforcement of ERA issued an Interim Remedial Order for Immediate Compliance (Order) to Mohawk Petroleum Corporation, Inc., (Mohawk) of Bakersfield, California. Under 10 CFR 205.199D(a), such an order shall be effective upon issuance and until rescinded or suspended, when DOE finds:

1. There is a strong probability that a violation has occurred, is continuing or is about to occur;

2. Irreparable harm will occur unless the violation is remedied immediately; and

3. The public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under 10 CFR 205.191 through 205.199C.

Because Mohawk's actions in this case involve a strong probability that a violation of the Mandatory Petroleum Allocation and Price Regulations, 10 CFR Parts 210 and 211 has occurred and is continuing to occur, and irreparable harm to a Mohawk customer, and through that customer, to the public, will occur unless that violation is eliminated, the DOE has determined that it is in the public interest to issue this Order to Mohawk.

I. The Interim Remedial Order for Immediate Compliance

Mohawk with its refinery located in Bakersfield, California, is a firm engaged in the refining and sale of petroleum products, including motor gasoline, and is subject to the Mandatory Petroleum Price and Allocation Regulations (The Regulations) at 10 CFR, Parts 210, 211 and 212. To avoid irreparable harm to public and private interests, DOE has issued this Order, the significant terms of which are as follows:

1. The Regulations provide that Mohawk may not terminate its supplier relationship with its purchase customers of motor gasoline, absent the written approval of DOE.

2. On October 4, 1979, Mohawk unilaterally terminated supply of motor gasoline to a reseller purchaser, without written approval from DOE.

3. As a result of that termination, the reseller purchaser's financial ability to continue business operations is jeopardized. Also, the reseller purchaser's own customers, through no fault of theirs, may suffer serious fuel shortages because adequate replacement product is not available.

4. Because of the unilateral termination of the supplier/purchaser relationship, DOE has ordered Mohawk to reinstitute delivery to the reseller purchaser within five days of the issuance date of the order.

II. Objection to the Order

Any person aggrieved by this Order may contest the basis for the Order by filing a Notice of Objection which meets the requirements of 10 CFR 215.193. The person objecting to the issuance of the Order shall follow the procedures specified in 10 CFR 205.192A through 206.199C to establish that the Order is erroneous in fact or law, or is arbitrary and capricious.

Issued in Washington, D.C. on the 31st day of October 1979.

Robert D. Gerring,

Director of Program, Operations Division.

[FR Doc. 79-34251 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TC80–10]

Alabama-Tennessee Natural Gas Co.; Tariff Filing

October 30, 1979.

Take notice that on October 18, 1979, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) filed in Docket No. TC80–10 Original Sheet No. 36–E–2 to its FERC Gas Tariff, Third Revised Volume No. 1, pursuant to the requirements of Order No. 29 and Section 281.204 of the Commission's Regulations. Said section of the Regulatons requires interstate pipelines to file no later than October 1, 1979, tariff sheets containing a curtailment plan and incorporating therein an index of high-priority and essential agricultural use entitlements of each of their customers. Alabama-Tennessee states that although it had timely filed the bulk of its tariff sheets, due to the vagaries of the postal service, it was not able to file concurrently its Index of Entitlements nor report of the Data Verification Committee, which were filed with the Commission on October 2, 1979. The instant filing of Original Sheet No. 36–E–2 was accompanied by a revised Index of End Use Volumes.

Alabama-Tennessee alleges that the filing complies with the requirements of Order No. 29 with respect to the curtailment plan requirements of Section 401 of the Natural Gas Policy Act as it affects high priority and essential agricultural uses. Copies of this filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protest must be filed on or before November 9, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34166 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80–32]

Columbia Gas Transmission Corp.; Application

October 30, 1979.

Take notice that on October 17, 1979, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston,

West Virginia 25314, filed in Docket No. CP80-32 an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing 131 interconnecting tap facilities to provide additional points of delivery to existing wholesale customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed new points of delivery and the service to be provided by the wholesale customer and the estimated annual usage in Mcf are as follows:

1. Proposed new points of delivery to Columbia Gas of Kentucky, Inc.
2 taps for commercial service — Estimated annual usage of 1,040 Mcf
2. Proposed new points of delivery to Columbia Gas of Ohio, Inc.
98 taps for residential service
5 taps for commercial service
2 taps for combined residential and commercial service — Estimated annual usage of 31,188 Mcf
3. Proposed new points of delivery to Columbia Gas of Pennsylvania, Inc.
3 taps for residential service
2 taps for commercial service — Estimated annual usage of 2,200 Mcf
4. Proposed new points of delivery to Columbia Gas of West Virginia, Inc.
19 taps for residential service — Estimated annual usage of 3,450 Mcf

Applicant states that the total cost of the interconnections proposed herein is estimated to be $39,450 which cost would be financed with internally generated funds.

Applicant further states that it does not propose to increase its currently authorized level of sales.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34167 Filed 11-05-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-45]

Connecticut Light & Power Co.; Amendment to Transmission Agreement

October 30, 1979.

The filing company submits the following:

Take notice that on October 22, 1979, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Amendment to Transmission Agreement (Amendment) dated April 10, 1979 between (1) CL&P, The Hartford Electric Light Company (HELCO) and Western Massachuestts Electric Company (WMECO), and (2) Holyoke Gas and Electric Department (HG&E).

The Amendment proposes to amend the Transmission Agreement by increasing the amount of the HG&E Purchase during certain periods within the term of the agreement to meet HG&E's system requirements during a period from April 1, 1980 to October 31, 1980, and during a period from May 1, 1981 to October 31, 1981. CL&P states that HG&E has executed contracts with Green Mountain Power Corporation (MP) of Burlington, Vermont and Vermont Electric Power Company, Inc. (VELCO) for an additional purchase of power from GMP's and VELCO's entitlements in the Vermont Yankee nuclear generating facility. CL&P requests that the Commission permit the Amendment filed to become effective on April 1, 1980. CL&P further requests that the Commission allow the rate schedule filed herewith to be accepted for an early filing. CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, HELCO, WMECO, and HG&E.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC, 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 21, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34168 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-40]

Duke Power Co., Supplement to Electric Power Contract

October 30, 1979.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on October 19, 1979, a supplement to the Company's Electric Power Contract with the City of Concord. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 245.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following changes in contract demand: Delivery Point No. 1 from 50,000 KW to 33,000 KW and Delivery Point No. 2 from —0— KW to 28,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of November 19, 1979. As a result, Duke Power requests waiver of the 60-day notice requirement.

According to Duke Power copies of this filing were mailed to the City of Concord and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commmission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such

petitions or protests should be filed on or before November 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34169 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-42]

Duke Power Co.; Supplement to Electric Power Contract

October 30, 1979.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on October 22, 1979, a supplement to the Company's Electric Power Contract with Davidson Electric Membership Corporation. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 134.

Duke Power further states that the Company's contract supplement, made at the request of the customer, provides for the following increases in designated demand:

Delivery point No.	Delivery from	Kilowatts to
1	2,400	3,700
3	1,500	2,500
4	500	650
5	4,100	4,800
6	24,000	44,000
8	900	1,400
10	1,350	1,600
11	5,000	5,900
12	2,000	2,200
13	1,000	1,300

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeding the effective date. Duke proposes an effective date of December 18, 1979.

According to Duke Power copies of this filing were mailed to Davidson Electric Membership Corporation and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34170 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP80-9]

Equitable Gas Company v. Appalachian Energy, Inc., et al.; Protest To Charge and Collect NGPA Prices

October 30, 1979.

Take notice that on August 27, 1979, Equitable Gas Company (Equitable) filed, pursuant to § 154.94 of the Commission's regulations (18 CFR 154.94), a protest to the following producer's assertions of contractual authority under the following contracts to charge and collect the applicable NGPA maximum lawful price:

Producer:	*Contract date*
Appalachian Energy, Inc	9-2-77
B. G. Bartley	7-30-58
B. G. Bartley	8-20-58
B. G. Bartley	9-15-59
B. G. Bartley	4-4-60
B. G. Bartley	2-17-61
B. G. Bartley	6-13-61
Castle Gas Co	1-29-71
Castle Gas Co	2-10-71
Doran Associates, Inc	12-13-77
Doverspike Gas Venture—1977	8-26-78
Louden Properties, Inc	7-22-31
Louden Properties, Inc	12-19-45
Louden Properties, Inc	12-30-53
Louden Properties, Inc	10-14-66
Mid-East Oil Co	10-9-61
Mid-East Oil Co	2-6-62
Ken Milliken	9-27-72
Fox Hill OOG	6-12-23
E. R. Rigatti	10-17-67
E. R. Rigatti	3-14-69
Tri-County Oil & Gas Co	5-18-72
Fairman Drilling	2-21-59
Fairman Drilling	6-13-60
Fairman Drilling	9-1-61
Fairman Drilling	3-6-62
Fairman Drilling	5-13-71
Fairman Drilling	7-14-71
Fairman Drilling	1-5-72

Equitable asserts that for each of the above listed contracts, the producer asserted the contractual authority to collect the maximum lawful price under section 108 or 103 of the Natural Gas Policy Act of 1978 (NGPA). Equitable Asserts in its protests that the above listed contracts do not authorize the collection of those prices.

Any person desiring to be heard or to make any response with respect to these protests should file with the Commission, on or before November 13, 1979, a petition to intervene in accordance with 18 CFR 1.8; after that date these protests will be forwarded to the Commission's Chief Administrative Law Judge, for disposition in accordance with Order No. 23-B (44 FR 38834, July 3, 1979).

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34171 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER76-714, ER76-715, ER76-716]

Indiana & Michigan Electric Co.; Extension of Time

October 30, 1979.

On October 11, 1979, the Indiana and Michigan Municipal Distributors Association (IMMDA) filed a motion to reopen the above-designated proceeding, pursuant to Section 1.33 of the Commission's Rules of Practice and Procedure (18 CFR 1.33). On October 12, 1979, the Cities of Anderson and Auburn, Indiana (Cities) filed a response in partial support of the petition to reopen proceedings filed October 11, 1979.

On October 22, 1979 Indiana & Michigan Electric Company filed a motion for an extension of time within which to respond to the motion filed by IMMDA. The motion requests an extension of time until 15 days after the Commission acts on the compliance filings required by the order issued September 24, 1979, in *American Electric Power Service Corporation,* Docket No. E-9408.

Upon consideration, notice is herby given that the time for filing answers to the motions filed by both IMMDA and Cities is extended to and including November 9, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34172 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-39]

Indiana & Michigan Electric Co.; Changes in Rates and Charges

October 30, 1979.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on October 22, 1979 tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&M), Modification No. 13 dated October 1 1970 to the Interconnection Agreement dated

November 27, 1961 between Illinois Power Company and Indiana & Michigan Electric Company, I&M's Rate Schedule FERC No. 23.

Sections 1 and 3 of Modification No. 13 provide for an increase in the demand charge for Short Term and Limited Term Power from $0.70 to $0.85 per kilowatt per week and $3.75 to $4.50 per kilowatt per month respectively. Sections 2 and 4 provide for an increase in the Short Term Power and Limited Term Power transmission charges from $0.175 to $0.24 per kilowatt per week and $0.75 to $1.00 per kilowatt per month respectively, both schedules proposed to become effective January 1, 1980.

Applicant states that since the use of Short Term Power cannot be accurately estimated, for the twelve months period succeeding the date of filing; it is impossible to estimate the increase in revenues resulting from this modification for such period. Applicant's Exhibit I which was included with the filing of this Modification, demonstrate that the increase in revenues which would have resulted had the modification been in effect during the twelve-month period ending July 1979, would have been (a) $26,250 (i.e., from $649,612.30 to $675,862.30) for sales, and (b) $105,002 (i.e. from $2,200,016.83 to $2,305,018.83) for purchases.

Applicant requests that any requirements of the Commission's Rules that have not already been complied with be waived, and that the Commission permit this modification to become effective on January 1, 1980.

Copies of the filing were served upon Illinois Power Company, the Public Service Commission of Indiana and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34173 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-9]

Iowa Southern Utilities Co.; Application

October 30, 1979.

Take notice that on October 16, 1979, Iowa Southern Utilities Company (Applicant), filed an application seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of $30,000,000 aggregate principal amount of unsecured short-term promissory notes and commercial paper notes. Applicant is incorporated under the laws of the State of Delaware with its principal business office at Centerville, Iowa, and is engaged in the electric utility business in 24 counties in Iowa.

The proceeds from the issuance of the securties will be added to the general funds of the Company, which general funds will be used, among other things, to provide in part, interim funds for construction expenditures to be made in 1980 and 1981.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1979, filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34174 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-8]

Kentucky Utilities Co.; Application

October 30, 1979.

Notice is hereby given that on October 16, 1979, Kentucky Utilities Company (Applicant) filed an application with the Commission seeking an order pursuant to Section 204 of the Federal Power Act, authorizing the issuance of up to $120,000,000 of unsecured short-term notes and commercial paper to be issued from time to time, with a final maturity date of not later than December 31, 1981. Applicant is incorporated in the State of Kentucky, with its principal business office at Lexington, Kentucky, and is engaged primarily in the sale of electric energy.

The net proceeds will be used to fund its construction program.

Any person desiring to be heard or to make any protest with reference to the application should, on or before November 23, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plum,

Secretary.

[FR Doc. 79-34175 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES80-10]

Long Island Lighting Co.; Application

October 30, 1979.

Take notice that on October 18, 1979, Long Island Lighting Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue through and including December 31, 1981 its unsecured promissory notes and commercial paper in a principal amount not to exceed $250,000,000, with maturity dates not later than September 30, 1982. Applicant is incorporated under the laws of the State of New York, with its principal business office at 250 Old Country Road, Mineola, New York 11501, and is engaged principally in the electric business in the State of New York.

The proceeds will be used to provide working capital, to finance expenditures against which other securities have not as yet been issued and, pending the issuance of new debt obligations maturing more than one year from the date of issuance and new equity issues, to construct electric, gas and common properties, repay any Long-Term Debt becoming due, redeem Preferred Stock or Long-Term Debt in accordance with optional or mandatory redemption provisions contained in the instruments creating such Preferred Stock or Long-Term Debt and to lend money to Tri-Counties Resources Trust or Tri-Counties Construction Trust.

Any person desiring to be heard or to make any protest with reference to the application should, on or before November 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or

protests in accordance with the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34176 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-43]

Montana Power Co.; Filing

October 30, 1979.

The filing company submits the following:

Take notice that on October 19, 1979, Montana Power Company filed Electric Tariff M-1 in order to satisfy the requirements of the Commission's Order of May 6, 1977 in Docket No. ER76-848.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Sections 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before November 21, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34177 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. EL79-29]

Municipal Electric Utilities Association of New York State; Filing Petition for Declaratory Order

October 30, 1979.

The filing Company submits the following:

Take notice that on September 27, 1979, the Municipal Electric Utilities Association of New York State (MEUA) tendered for filing a petition for a declaratory order to clarify the applicability of *Village of Penn Yan*, Docket No. ER78-29, to all NS-11 and S-7 customers. On August 7, 1979 MEUA had filed a protest to the compliance filing of New York State Electric Gas Company (NYSEG) in Docket No. EL78-29. MEUA's protest and petition will be treated together in the above-captioned docket, EL79-29.

MEUA requests that the Commission order the NYSEG to delete certain territorial restrictions from NS-11, S-7, and other related contracts.

MEUA respectfully urges the Commission to decide this matter promptly and expeditiously.

Any person desiring to be heard or to protest said protest or petition should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8, and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.9 or 1.10). All such petitions or protests should be filed on or before November 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34178 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-5]

Sun Oil Company (Delaware); Application for Adjustment

Issued October 30, 1979.

Take notice that on October 10, 1979, Sun Oil Company, Delaware (Applicant), P.O. Box 20, Dallas, TX 75221, filed with the Federal Energy Regulatory Commission an application for an adjustment under § 271.303 of the Commission's regulations implementing section 103 of the Natural Gas Policy Act of 1978 (NGPA). Applicant seeks an adjustment from the requirement that gas qualifying for a maximum lawful price under section 103 of the NGPA be produced from a new well spudded on or after February 19, 1977. Such an adjustment, if granted, could permit the sidetracking of an old well[1] to qualify as a section 103 New Onshore Production Well. Gas from this well is sold to United Gas Pipeline Company under Sun's FERC Gas Rate Schedule No. 114.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, Docket No. RM 79-32 (issued March 22, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before November 21, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34179 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Bell Isle Unit Well 1-75, Belle Isle Field, St. Mary Parish, Louisiana.

[Docket No. TC80-30]

Texas Gas Transmission Corp.; Offer of Settlement

October 30, 1979

Take notice that on October 25, 1979, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. TC80-30 a proposed stipulation and agreement with its customers as an offer of settlement providing relief from certain of the requirements of Section 401 of the Natural Gas Policy Act of 1978 and the Commission's Order No. 29, *et seq., promulgated thereunder.*

The regulations promulgated in Order No. 29, *et seq.*, require the filing of revised tariff sheets and a new index of entitlements providing protection for high-priority and essential agricultural users. The proposed stipulation and agreement contains the assertion that protection of essential agriculatural and high-priority future curtailment procedures through March 31, 1981. Such protection would be accomplished by the addition of Section 10.7 to the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Third Revised Volume No. 1, Which section would become effective December 1, 1979. Under the proposed stipulation and agreement, Texas Gas would not be required to file the draft tariff sheets and index of entitlements contemplated by Order No. 29, *et seq.*

The proposed stipulation and agreement further provides that in Texas Gas's FERC Form No. 16 estimates for the 1980-81 winter season reflect curtailment level greater than 350,000 Mcf of gas per day, the upon request by any of its customers Texas Gas will notify the Commission and convene a settlement conference to determine whether changes in Texas Gas's curtailment procedures are required. Texas Gas states that in view of its current and projected curtailment situation, no purpose would be served by requiring modification of an end-use data base and a change in curtailment procedures.

Any person desiring to be heard or to make any comment with respect to the offer of settlement should within 20 days from the date of filing of said offer file with the Federal Energy Regulatory

Commission, Washington, D.C. 20426, its request for hearing or comments in accordance with the Commission's Rules of Practice and Procedure. Reply comments may be filed within 30 days from the date of filing of the offer of settlement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34180 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-10]

Texas Gas Transmission Corp.; Application for Adjustment

October 30, 1979.

Take notice that on October 25, 1979, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. SA80-10 an application pursuant to Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41) requesting that the Commission issue an order relieving Texas Gas of the requirement of strictly complying with the requirements of Order No. 29, *et seq.*, and waiving the requirements of those orders to the extent necessary to permit Texas Gas to effect a proposed stipulation and agreement submitted concurrently in Docket No. TC80-30. Additionally, Texas Gas requests relief from the November 1, 1979, filing date, pending the Commission's ruling on the proposed stipulation and agreement and request for adjustment. The application is on file with the Commission and open to public inspection.

The regulations promulgated in Order No. 29, *et seq.*, require the filing of revised tariff sheets and a new index of entitlements providing protection for high-priority and essential agricultural users. The proposed stipulation and agreement contains the assertion that protection of essential agricultural and high-priority uses can be provided at Texas Gas's current and projected future curtailment levels by continuation of existing curtailment procedures through March 31, 1981. Such protection would be accomplished by the addition of Section 10.7 to the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Third Revised Volume No. 1, which section would become effective December 1, 1979. Under the proposed stipulation and agreement, Texas Gas would not be required to file the draft tariff sheets and index of entitlements contemplated by Order No. 29, *et seq.*

The proposed stipulation and agreement further provides that if Texas Gas's FERC Form No. 16 estimates for the 1980-81 winter season reflect curtailment level greater than 350,000 Mcf of gas per day, then upon request by any of its customers, Texas Gas will notify the Commission and convene a settlement conference to determine whether changes in Texas Gas's curtailment procedures are required. Texas Gas states that in view of its current and projected curtailment stiuation, no purpose would be served by requiring modification of an end-use data base and a change in curtailment procedures.

Any person desiring to participate in this adjustment proceeding shall file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene in accordance with the provisions of Section 1.41 of the Commission Rules of Practice and Procedure (18 CFR 1.41). All petitions to intervene must be filed on or before November 21, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34181 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. EL80-5]

Town of Springfield, Vermont v. Central Vermont Public Service Corp.; Complaint and Petition for Declaratory Order

October 30, 1979.

The filing party submits the following:

Take notice that on October 12, 1979, the Town of Springfield, Vermont (Springfield) filed a complaint against the Central Vermont Public Service Corporation (Central Vermont), and a petition for a declaratory order.

In its complaint Springfield alleges that Central Vermont, formerly the supplier of retail electric power to Springfield, has refused to sell wholesale electric power to Springfield because of a restriction in its wholesale tariff. Springfield requests that the Commission find this restriction void as against public policy and order that it be stricken from the tariff.

Springfield further contends that it is an allottee under contracts to purchase power from the Power Authority of the State of New York, between the Vermont Public Service Board and Central Vermont, and thus entitled to its share of this power. Central Vermont contends that it is entitled to this power and only its retail customers may benefit from the contract.

Since Springfield has been unable to locate the contracts in question (contracts NS-20 and S-2), it requests that the Commission order filing of these contracts, and further requests that the Commission interpret the contracts to require the power from these contracts to be available to Springfield.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34182 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-41]

Tucson Electric Power Co.; Filing of Supplement to Interconnection Agreement

October 30, 1979.

The filing Company submits the following:

Take notice that on October 19, 1979, the Tucson Electric Power Company (Tucson) tendered for filing Service Schedule A-3, "Banked Energy", to the Interconnection Agreement between Tucson and Utah Power and Light Company (Utah).

The primary purpose of Service Schedule A-3 is to enable Utah and Tucson to optimize the use of non-oil-fired energy in their respective systems.

Tucson respectfully requests that the Commission accept this Service Schedule for filing so that service thereunder may become effective October 1, 1979.

A copy of this filing has been sent to Utah Power & Light Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be

taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34183 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-44]

Tucson Electric Power Co.; Filing Tucson-Los Angeles 1979 Nonfirm Energy Agreement

October 30, 1979.

The filing company submits the following:

Take notice that Tucson Electric Power Company (Tucson) on October 25, 1979, tendered for filing Tucson-Los Angeles 1979 Nonfirm Energy Agreement between Tucson and Los Angeles Department of Water and Power (Los Angeles). The primary purpose of this Agreement is to provide the terms and conditions relating to the sale of energy to Los Angeles for resale during the period from November 1, 1979 to June 30, 1980. Tucson has no other rates for similar sales of non-firm energy.

Tucson respectfully requests that the notice requirements of Section 35.3 of the Commission's Regulations be waived in order that this submittal be accepted for filing as of November 1, 1979, so that Los Angeles may avoid the burning of oil.

A copy of this letter has been mailed to Los Angeles.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 21, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34184 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-38]

West Texas Utilities Co.; Application for Change of Rates

October 30, 1979.

The filing Company submits the following:

Take notice that on October 17, 1979, the West Texas Utilities Company (WTU) tendered for filing an Application for Change of Rates.

The Proposed Rate Schedule TR-1 would provide an increase in revenue from affected customers of approximately $8,261,349 during the year ending December 31, 1980. This is an increase of approximately 10.6% for the affected customers.

WTU is seeking this rate increase so as to increase its rate of return from the present 4.81% to 10.80% in order that it may attract the necessary amounts of capital to continue providing adequate service to its customers.

A copy of this filing has been sent to each of WTU's customers.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34185 Filed 11-5-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1352-3]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of October 22 to October 26, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from November 2, 1979 and will end on December 17, 1979. The 30-day review period for final EIS's as calculated from November 2, 1979 will end on December 3, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For hard copy reproduction: Environmental Law Institute, 1346 Connecticut Avenue NW., Washington, D.C. 20036

For hard copy reproduction or microfiche: Information Resources Press, 2100 M Street NW., Suite 316, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to Section 1506.10(a), the 30 day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of October 22 to October 26, 1979, the 30 day review period will be calculated from November 2, 1979. The review period will end on December 3, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of October 22 to October 26, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the

actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: October 31, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I—EIS's Filed With EPA During the Week of October 22 to 26, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412–A, Admin. Building, Washington, D.C. 20250, (202) 447–3965.

Soil Conservation Service

Draft

Corrales Watershed Project, Bernalillo and Sandoval Counties, N. Mex., Oct. 26: Proposed is a watershed protection and flood prevention project in Bernalillo and sandoval Counties, New Mexico. The planned works of improvement include land treatment measurers, two floodwater diversions and minor channel work designed to control floodwater, reduce erosion, and reduce sediment damages. Floodwater Diversion No. 2 and the associated minor channel work were completed in March 1975. The floodwater diversions will intercept flood flows from two major arroyo channels and other smaller arroyos and direct those flows into the Rio Grande. (EIS order No. 91110.)

DEPARTMENT OF DEFENSE, ARMY

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN–ZCE, Officer of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694–4269.

Draft

Fort Knox/Army Armor Center On-going Mission, Hardin, Meade, and Bullitt Counties, Oct. 26: Proposed is the continuation of the on-going mission of Fort Knox and the U.S. Army Armor Center located in portions of Hardin, Meade, and Bullitt Counties, Kentucky. The on-going mission would involve the continued command and control of all assigned and attached activities and units and the provision of logistical and administrative support to designated activities. (EIS order No. 91106.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272–0121.

Draft

Westerly Creek Flood Protection, Denver and Arapahoe Counties, Colo., Oct. 22: Proposed is a flood control project for Westerly Creek in Denver and Aurora, Denver and Arapahoe Counties, Colorado. The project will include the upgrading of Kelly Road Dam and the construction of the Upper Lowry Detention Dam. The alternatives considered are: 1) modification of Kelly Road Dam, 2) protection of Kelly Road Dam, 3) removal of Kelly Road Dam, 4) removal of downstream floodplain structures, and 5) no action. (Omaha District) (EIS order number 91089.)

Waimea River Flood Control, Waimea, Kauai, Kauai County, Hawaii, Oct. 24: Proposed is a flood control plan for the Waimea River in the Town of Waimea, Kauai County and Island, Hawaii. The alternatives considered include: 1) floodproofing; 2) river channel deepening, raising the existing levee, toe protection, and construction of a new levee; and 3) raising of the existing levee, toe protection, and construction of a new levee. (Pacific Ocean Division) (EIS order number 91097.)

Final Supplement

Baytown Flood Control, Evacuate/Relocate (FS–1), Harris County, Tex., Oct. 22: This statement supplements a final EIS, #80911, filed August 1978. Proposed is the evacuation and relocation of all residents from the flood plain area of the City of Baytown, Harris County, Texas. The plan also involves removal of structures from the flood plain and deeding of the lands to the City of Baytown for management as a nature area or other passive uses. (Galveston District) Comment Made By: EPA, DOC, DOI, DOT, USDA, AHP, State and local agencies. (EIS order number 91091.)

Final Supplement

Sault Ste. Marie Limited Extension of Operation, Chippewa County, Mich., Oct. 26: This statement supplements a final EIS, #71499, filed 11–15–77 concerning the O/M of the Federal Facilities at Sault Ste. Marie on the St. Marys River in Chippewa County, Michigan. Proposed is a limited season extension from the original closure date of December 15, 1979 to approximately January 8, 1980. The purpose of the extension is to meet reasonable demands of commerce to the extent that weather and ice conditions permit. The alternatives consider no action and three other closure dates. (Detroit District) Comments made by: USDA, DOC, HEW, DOI, DOT, FERC, EPA, State and local agencies, groups and businesses. (EIS order number 91103.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377–4335.

National Oceanic and Atmospheric Administration

Draft

Shrimp Fishery, Gulf of Mexico, FMP, Gulf of Mexico, Oct. 26: Proposed is a fishery management plan for the Shrimp Fishery of the Gulf of Mexico. The species of shrimp affected are the brown shrimp, white shrimp, pink shrimp, royal red shrimp, seabobs, and rock shrimp. The modified maximum sustainable yields are estimated in million pounds (tails) per year as follows: 1) brown—132, 2) white—64, 3) pink—20, and 4) royal red—0.392. Seabobs and rock shrimp are caught incidental to the three main species of penaeid shrimp. (EIS order number 91112.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: EPA Library MD–35, Research Triangle Park, North Carolina 27711 (919) 541–2777.

Draft

Stationary Internal Combustion Engines, Standards, regulatory, October 26: Proposed under Section III of the Clean Air Act are standards of performance for stationary combustion engines. The standards would limit emissions of nitrogen oxides from diesel and duel-fuel stationary internal combustion engines with greater than 560 CID/cyl and gas engines with greater than 350 CID/cyl or equal to or greater than 8 CID/cyl and greater than 240 CID/cyl. (EIS Order No. 91107.)

FEDERAL MARITIME COMMISSION

Contact: Mr. Paul Gonzalez, Chief, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5835.

Draft

Pacific Westbound Conference, Equalization, October 26: Proposed is the Commission decision on equalization and absorption rules and practices by the Pacific Westbound Conference (PWC). The Commission has found that the PWC and its member lines substituted service is lawful as it affects the Port of Portland, Oregon. The alternatives consider: 1) finding PWC substituted service unlawful, 2) finding PWC substituted service lawful. If found unlawful,

direct vessel calls at Portland, and current truck movements are examined. (EIS Order No. 91108.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, N.W., Washington, D.C. 20405 (202) 566-1416.

Final

Federal Building and Parking Facility, El Paso, El Paso County, Tex., October 24: The proposed action concerns the construction of a new Federal building and parking facilities in El Paso County, Texas. The building will provide approximately 132,600 square feet of space and will house most Federal agency personnel now located in other leased space throughout the City. The proposal will also include approximately 126,000 square feet of parking space for an estimated 360 vehicles. Current plans are for the construction of a multi-story building of reinforced concrete and/or structural steel framing. (ETX 78001.) Comments Made by: USDA, DOT, EPA, DOI, HEW, DLAB, DOC, COE, GSA, AHP, State Agencies. (EIS Order No. 91095.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6306.

Draft

Chesterfield Subdivision, Mortgage Insurance, Anne Arundel County, Md. October 24: Proposed is the issuance of HUD home mortgage insurance for the Chesterfield Subdivision in Anne Arundel County, Maryland. The subdivision is located on 380 acres and will consist of 1,846 units plus a commercial and office space area. The units to be constructed will include a mixture of single-family homes, semi-detached, townhouses and garden apartments. (EIS Order No. 91096.)

Royal Village Planned Development, Belgrade, Gallatin County, Mont., October 22: Proposed is the issuance of HUD home mortgage insurance for the development of the Royal Village planned development located in Belgrade, Gallatin County, Montana. The development will consist of 1,250 units of single-family, townhouse and mobile home sites. Mortgage insurance has been requested for 110 single-family units, 27 townhouse units, and 126 mobile home units. (HUD-RO8-EIS-79-XVIILD.) (EIS Order No. 91088.)

Final Supplement

Homestead Planned Community (FS-1), Spokane County, Wash., October 23: Proposed is the issuance of HUD home mortgage insurance for the Homestead Planned Community in Spokane County, Washington. The community is located on a 1,175 acre tract and will include: (1) 21 acres of community shopping facilities, (2) 410 acres for an industrial park and industrial campus, (3) 70 acres for institutional services, (4) 524 acres of the 2,534-unit residential community, and (5) 150 acres for recreational and school facilities. (HUD-RIO—EIS-78-2F.) (EIS Order No. 91098.)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Carl Bausch, Chief, Section of Energy and Environment, Interstate Commerce Commission, Room 3371, 12th & Constitution Ave., N.W., Washington, D.C. 20423 (202) 275-7658.

Draft

Milwaukee Railroad Company, Abandonment, several counties, October 22: Proposed is the abandonment of portions of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's (referred to as "Milwaukee") Pacific Coast Extension in Montana, Idaho, Washington and Oregon. The abandonment would include 1,780.2 miles of line owned outright, 717.7 miles of jointly owned, and trackage rights lines west of Miles City, Montana. Rail service will be continued by other carriers on jointly owned and trackage rights lines. (Docket No. AB 7, Sub. No. 86F.) (EIS Order No. 91090.)

DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.

Bureau of Land Management

Final

Intermountain Power Project, Salt Wash Site, several counties, October 26: Proposed is the transfer of land, the issuance of permits, and granting of right-of-way in conjunction with the construction and operation of a 3,000 megawatt coal-fire generating station and related transmission facilities. The proposed location of the station is known as the Salt Wash site in Wayne County, Utah. Transmission lines will transverse the States of Utah, Arizona, Nevada, and California, and will include: two 500kV d.c. lines, one 230kV a.c. line, a 230kV line, and two 345kV lines. (FES-79-56.) Comments made by: AHP, DOE, DOT, DOI, USDA, EPA, State and local agencies, groups, individuals and businesses. (EIS Order No. 91102.)

Bureau of Outdoor Recreation

Final

Owyhee River, Wild and Scenic Designation, several counties in Idaho, October 22: The action concerns a proposal which recommends that a 192 mile segment of the Owyhee River and approximately 61,440 acres comprising its immediate environment in Oregon and Idaho be included into the National Wild and Scenic Rivers Systems. Segments of the river from the Duck Valley Indian Reservation downstream to China Gulch and from Crooked Creek to the Owyhee Reservoir would be added to the System by Congress. The segment from China Gulch to Crooked Creek would be added first to the Oregon Scenic Waterways System and then to the National System by the Secretary of Interior. (FES-79-53.) Comments made by: DOI, USA, HUD, DOE, USDA, EPA, AHP, State and local agencies, groups, and individuals. (EIS Order No. 91093.)

Bureau of Reclamation

Final

Municipal and Industrial System, Bonneville Unit, several counties in Utah, October 25: The proposed Municipal and Industrial System of the Bonneville Unit would be located in Salt Lake, Utah, Summit and Wasatch Counties in North Central Utah. The project plan would include: construction of Jordanelle Reservoir and Power plant on the Provo River, completion of two aqueducts now under construction, and modification of 15 upper Provo River reservoirs. The primary purpose would be to provide 90,000 acre-feet of water annually for municipal and industrial use in Salt Lake County and northern Utah. Several alternatives have been addressed. (FES-79-55.) Comments made by: AHP, DOI, COE, EPA, FERC, HEW, USDA, State and local agencies, groups, individuals, and businesses. (EIS Order No. 91101.)

Heritage Conservation and Recreation Service

Final

Patapsco Valley State Park, funding, several counties in Maryland, October 22: Proposed is the issuance of land and water conservation funding for the acquisition of 4,800 acres into and development of the Patapsco Valley State Park in Anne Arundel, Carroll, Baltimore and Howard Counties, Maryland. Development of the area will include facilities for: hiking, camping, horseback riding, picnicking, boating, swimming, playfields/courts, and nature study. Three alternatives are considered (FES-79-54.) Comments made by: EPA, FERC, USDA, DOI, State and local agencies. (EIS Order No. 91094.)

National Park Service

Final

Gunnison River, Wild and Scenic River Study, Montrose County, Colo., October 22: Proposed is the inclusion of a 26 mile segment of the Gunnison River, Montrose County, Colorado in the National Wild and Scenic Rivers System, classified as a wild river. The plan also includes the classification of about 12,900 adjacent acres as wild. This river segment is situated between the upsteam boundary of the Black Canyon of the Gunnison National Monument and the confluence of the Gunnison with the Smith Fork River. The alternatives include no action, and classification options. (FES-79-52.) Comments made by: TVA, DOI, State and local agencies, groups, individuals, and businesses. (EIS Order No. 91092.)

OHIO RIVER BASIN COMMISSION

Contact: Mr. I. Bernstein, Ohio River Basin Commission, Suite 206-20, 36 East Fourth Street, Cincinnati, Ohio 45202 (513) 684-3831.

Draft

Kentucky/Licking River Basins' Resources Plan, several counties in Kentucky, October 26: Proposed is the Kentucky/Licking River Basins' Regional Water and Land Resources Plan located in 30 counties of Kentucky. The plan consists of 72 projects including one Army local protection project, seven USDA/

SDS watershed treatment plants and 29 modifications to existing treatment facilities. Also included in the Plan are a number of recommended programs and special studies. (EIS Order No. 91104.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

CT-34, New Haven, West Haven, and Orange, New Haven County, Conn., October 25: Proposed is the construction of an improved transportation facility within the CT-34 corridor in New Haven West Haven and Orange in New Haven County, Connecticut. Five alternatives are considered which include: (1) build to the Boulevard, (2) build to Orange/West Haven town line with CT-1 connector, (3) build to Orange/West Haven town line without CT-1 connector, (4) exclusive busway facility, and (5) low capital improvements including public transit and roadway network. (FHWA-CONN-EIS-79-01-D.) (EIS Order No. 91100.)

U.S. 2, Churches Ferry to Devils Lake, Benson and Ramsey Counties, N. Dak., October 26: Proposed is construction of US 2 a two-lane roadway parallel to the existing roadway from the junction of US 281 and US 2 (just west of Churches Ferry) to the existing four lane roadway (just west of Devils Lake). The project will provide a four lane divided highway approximately 18 miles long. The project will require additional right-of-way. The project will improve the quality of travel for motorists by providing a four-lane facility that will reduce the conflicts between slow moving local vehicles and faster moving through traffic. (FHWA-ND-EIS-79-01D.) (EIS Order No. 91109.)

Draft Supplement

FAP 406, Lincoln to Morton, Logan and Tazewell Counties, Ill., October 26: This statement supplements a final EIS No. 31519 filed September 19, 1973, and a draft EIS No. 31690 filed October 24, 1973. The proposed action involves Federal-Aid matching funds, consisting of the construction of Supplemental Freeway FAP 406 between Lincoln and Morton, Illinois in Logan and Tazewell Counties. FAP 406, which generally commences with FAI 55 northwest of Lincoln, Illinois, extends northerly and ends at FAI 74 at Morton, Illinois. The total distance is approximately 30.9 miles, however, the actual construction length is 27.4 miles since a 3.5 mile section near Hopedale has already been completed and is open for traffic (FHWA-EIS-73-04-DS.) (EIS Order No. 91111.)

VETERANS ADMINISTRATION

Contact: Mr. Willard Sitler, Director, Office of Environmental Activities (004A), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389-2526.

Draft

San Francisco VA Medical Center, San Francisco County, Calif., October 26: Proposed is a 120 Bed Nursing home care unit at the VA Medical Center, San Francisco City and County, California. The center currently operates 357 inpatient beds and services approximately 190,000 out patients annually at facilities west of downtown San Francisco. The 120-bed unit is part of a total 630 existing or proposed nursing home beds at the six Medical Centers in the northern California and Reno area of VA Medical District No. 27. The VA proposes to construct an approximately 23,500 net sq. ft. NHCU west of the existing Main Hospital. No specific design or site plan for the facility has been prepared. (EIS Order No. 91105.)

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
DEPARTMENT OF TRANSPORTATION					
Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.	CT-34, New Haven, West Haven and Orange, Improved Transportation Facility.	Draft 91100	Nov. 2, 1979 (see appendix I).	Extension	Jan. 2, 1980.
OHIO RIVER BASIN COMMISSION					
Mr. I. Bernstein, Ohio River Basin Commission, Suite 208-20, 36 East Fourth Street, Cincinnati, Ohio 45202, (513) 684-3831.	Kentucky/Licking River Basins Water and Land Resources Plan.	Draft 91104	Nov. 2, 1979 (see appendix I).	Extension	Jan. 19, 1980.

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/No.	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No	Date notice of availability published in "Federal Register"	Correction
U.S. DEPARTMENT OF AGRICULTURE				
Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A Admin. Building, Washington, D.C. 20250, (202) 447-3965.	Paw-Paw Bottoms RC&D Measure Plan.	Final 91024	Oct. 5, 1979	Published with incorrect title. Correct title is: Paw-Paw Bottoms Watershed Plan.

[FR Doc. 79-34225 Filed 11-5-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. A-4]

AM Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Released: October 26, 1979.

CUTOFF DATE: December 17, 1979.

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after December 17, 1979. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 17, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., not later than the close of business on December 17, 1979.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on December 17, 1979.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

BP-781030AJ (KEWQ), Paradise, California, Butte Broadcasting Co. Has: 930 kHz, 500 W, Day. Req: 930 kHz, 1 kW, 500 W-LS, DA-N, U

BP-781113AK (New), California, Missouri, Town and Country Communications, Inc. Req: 1420 kHz, 500 W, Day

BP-790205AE (KRUX), Glendale, Arizona, Arizona Lotus Corp. Has: 1360 kHz, 500 W, 5 kW-LS, DA-N, U. Req: 1360 kHz, 1 kW, 5 kW-LS, DA-N, U

BP-790205AF (WZNG), Cypress Gardens, Florida, Vantage Broadcasting Co. Has: 1360 kHz, 1 kW, Day (Winter Haven). Req: 1360 kHz, 2.5 kW, 5 kW-LS, DA-2, U (Cypress Gardens)

BP-790313AB (KCMJ), Palm Springs, California, Westminster Broadcasting Corp. Has: 1010 kHz, 500 W, 1 kW-LS, DA-2, U. Req: 1140 kHz, 5 kW, 10 kW-LS, DA-N, U

BP-790403AD (WITS), Boston, Massachusetts, Mariner Communications, Inc. Has: 1510 kHz, 5 kW, 50 kW-LS, DA-2, U. Req: 1510 kHz, 50 kW, DA-2, U

BP-790509AF (New), Portland, Tennessee, Better Communications, Inc. Req: 1270 kHz, 1 kW, DA, Day

[FR Doc. 79-34221 Filed 11-5-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 76G-0367]

American Feed Manufacturers Association, Inc.; Petition for Affirmation of GRAS status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The American Feed Manufacturers Association, Inc. (AFMA) has filed a petition proposing affirmation that selenium be generally recognized as safe (GRAS) as a nutritional supplement in feeds for chickens producing eggs for human consumption.

DATE: Comments by January 7, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Graber, Bureau of Veterinary Medicine (HFV-220), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1786 as amended 921 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status (§ 570.35 (21 CFR 570.35)), notice is given that a petition (GRASP MF 3433) has been filed by the American Feed Manufacturers Association, Inc., 1701 N. Fort Meyer Dr., Arlington, VA 22209, proposing that selenium be affirmed as GRAS as a nutritional supplement in feeds for chickens producing eggs for human consumption. The petition has been placed on public display at the office of the Hearing Clerk.

The petition proposes that sodium selenite or sodium selenate be affirmed as GRAS when used in accordance with good manufacturing and feeding practices so as to provide not more than 0.1 ppm of supplemental selenium in the diet of chickens producing eggs for human consumption. Selenium is currently approved as a food additive for use in the feed of growing chickens, turkeys, swine, sheep and cattle (21 CFR 573.920).

Any petition that meets the format requirements outlined in § 570.35 is filed by the Food and Drug Administration. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before January 7, 1979, review the petition and/or file comments, preferably four copies, with the Hearing Clerk (HFA-305), Food and Drug Administration, address above. Comments should be identified with the Hearing Clerk docket number found in brackets in the heading of this document and should include any available information helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk from 9 a.m. to 4 p.m., Monday through Friday.

Dated: October 30, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-34165 Filed 11-05-79; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Pharmaceutical Reimbursement Board; Maximum Allowable Cost Limits for Certain Drugs; Closing of the Record

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice.

SUMMARY: This notice provides the last opportunity before the closing of the record for public comments on the proposed maximum allowable cost (MAC) limits on hydralazine 25 and 50 mg tablets. We will publish the Board's final determination on establishing MAC limits for these items after the close of the comment period for this notice. We have included, as an appendix, two Food and Drug Administration (FDA) summary reports on hydralazine.

DATE: Closing date for receipt of comments on or before November 21, 1979.

ADDRESSES: Address comments in writing to: Charles Spalding, Health Care Financing Administration, Department of Health, Education, and Welfare, 1-C-5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION, CONTACT: Charles Spalding, 1-C-5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235, 301-594-5403

SUPPLEMENTARY INFORMATION: On April 10, 1979, the Board proposed MAC limits for hydralazine 25 and 50 mg tablets. In the same notice, the Board announced public hearings on the MAC limits to be held on May 30 and 31, 1979. (See 44 FR 21367.)

On May 29, after the period for written comments closed, Ciba Geigy Corporation submitted information concerning possible clinical failures of generic hydralazine. The Board accepted this submission since it raised the possiblity of danger to the public health. At the May 30 public hearing, the Board requested the FDA to review the Ciba Geigy data.

The two FDA summary reports from the Director, Bureau of Drugs and the Director, Division of Drug Product Quality, contain FDA findings on the Ciba Geigy data. Additional information and documentation are available for inspection in the Office of Pharmaceutical and Medical Services Branch, 1-C-5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235.

Dated: October 18,1979.

Charles Spalding,

Acting Executive Secretary, Pharmaceutical Reimbursement Board.

APPENDIX

Date: August 6, 1979.

To: Chairman, Pharmaceutical Reimbursement Board, Health Care Financing Administration.

From: Director, Bureau of Drugs, Food, and Drug Administration.

Subject: Report to the Board on Investigation of Alleged Therapeutic Failures of Hydralazine.

As the Board requested at the May 30 hearing concerning CIBA-GEIGY's supplemental statement alleging therapeutic failures of generic hydralazine tablets at Carswell Air Force Base, we have conducted a thorough investigation of the charges. Our complete files on this investigation are attached to this memorandum. Investigators from our Dallas Field Office visited Carswell Air Force Base and interviewed the reporting physician; investigators from our Baltimore Field Office interviewed members of the Pharmaceutics and Therapeutics Committee at Andrews Air Force Base hospital; and samples of the suspect lots were analyzed in FDA laboratories.

It is clear that the allegations made by CIBA-GEIGY in their supplemental statement of May 29 and the affidavit of Henry C. Kirsch, also of May 29, are not substantiated by this investigation. At the hearing the representatives of Ciba-Geigy promised a full report of their information to the FDA, but declined to release their "report" to the Board because they wished to protect the confidentiality of the reporting physician. Subsequently, the identity of the physician has become public knowledge and Ciba-Geigy's only report, which consists of a brief letter dated May 29 to Dr. Jones of the Bureau of Drugs, is attached.

I have personally reviewed the case reports from the Carswell Air Force Base hospital. The data show only one occasion in one patient when the blood pressure increased significantly in association with the use of generic hydralazine—the May 14, 1979 office visit of patient 1-e (erroneously typed as 1-3 in the investigator's report of June 12, 1979). The blood pressure changes in all other patients are either typical of the variation that occurs from day to day in hypertensive patients or are not correlated in time with the use of any particular brand of hydralazine. In patient 1-e the isolated blood pressure increase found on May 14, 1979 was under control again on May 18, 1979. While the cause of this transcient increase is unknown, such changes are not infrequent in hypertensive patients. One such episode in one patient cannot reasonably be taken as evidence of "therapeutic failure," especially when the product is apparently working in many other patients in the same clinic.

Our conclusion it that Ciba-Geigy's allegation of therapeutic failure in this instance is wholly unsubstantiated. In fact, the record suggests that a Ciba-Geigy sales representative sowed the seeds of discontent over generic hydralazine at Carswell Air Force base by suggesting to the medical staff that the generic product may not be bioavailable. Ciba-Geigy then simply reported the alleged occurrence of therapeutic failures without any serious evaluation of the evidence. The net effect was to thrust the burden of investigating the situation onto the taxpayers and to take advantage of the administrative process for establishing a MAC.

My understanding is that the Board may wish to discuss how best to handle eleventh-hour submissions, with the intent of separating those that may have merit from those that are frivolous and derive from a failure of corporate responsibility. We will be please to cooperate with the Board in developing an approach to this problem.

Because the charges of therapeutic inequivalence of hydralazine were found unsupportable, we see on reason for any further delay in the MAC setting process on this drug.

J. Richard, Crout, M.D.

Date: July 17, 1979.

To: Director, Bureau of Drugs, HFD-1.

From: Director, Division of Drug Product Quality, HFD-330.

Subject: Investigations of Allegations Made by Henry C. Kirsch, of Ciba-Geigy, May 29, 1979 to the MAC Board.

This is a summary report of the investigations made by the Food and Drug Administration into the allegations in the affidavit filed by Henry C. Kirsch, Ciba-Geigy Corporation, on May 29, 1979 filed with Ciba-Geigy's supplemental statement to the MAC Board. The Affidavit alleged: 1) that reflected on the quality of Lemmon's hydralazine tablets, and (2) that therapeutic failures accurred at Carswell Air Force Base (CAFB) which for similar reasons, Andrews Air Force Base had discontinued the use of Lemmon's hydralazine.

The FDA investigation at Carswell Air Force Base disclosed that the base pharmacy began dispensing Lemmon's 25 mg hydralazine tablets in mid-February 1979, and halted in the 3rd week of May 1979. Approximately 69,000 tablets were dispensed to an estimated 500 to 600 out patients.

Dr. X is the only physician (of 7-10 treating hypertensive patients in the clinic) who reported observing lack of effectiveness to DPSC and to the Ciba-Geigy representative, Mr. George French. He produced 5 case histories for the investigator (not 6 as charged in the affidavit). When the FDA investigator discussed the details of the five case histories with Dr. X, he (Dr. X) stated that these were poor examples of product failure. In fact a close examination of the medications prescribed suggests that generic Hydralazine was sparingly prescribed by Dr. X. In most instances Apresoline 50 mg was prescribed, and in such circumstances the base pharmacy dispensed only the Apresoline 50 mg tablets. (They did not dispense 2x25 mg generic Hydralazine Tablets). The Base pharmacy had continued to stock and dispense Apresoline 50 mg concurrently with Lemmon's Hydralazine 25 mg tablets. Dr. X

also reported that he had observed more significant deficiencies in other products which he had not reported as deficiencies.

A review of the five medical records by the Division of Drug Experience indicated that all patients were on multi-drug regimens, using a combination of Inderal, Lasix, Hygroton, Aldactone, Minipress, Hydrochlorthiazide, and Slow-K along with Apresoline or generic Hydralazine. There is no clear way in which a report of ineffectiveness can be substantiated. Chart summaries and graphs constructed from the medical records (attachment 1) suggest the following:

A. In light of the intrinsic variable nature of hypertension, there are actually too few readings at too infrequent intervals on most of these patients to make any clear judgment as to effectiveness or lack thereof of any of these drugs with the possible exception of the short period on patient 1(a).

B. In all of the cases, there were changes in several of the medications, dose and frequency, which would make it very difficult to make any attribution to one particular product.

C. The records themselves are very brief and many entries appear to be made by the assistant (nurse/practitioner or corpsman) and countersigned by Dr. X suggesting no continuity of surveillance allowing this type of judgment.

D. In two or more of the cases there was the tendency to switch one or more medications at many visits, such that again no definite impression of therapeutic effectiveness or lack thereof could be clearly made.

E. There is no indication on the chart as to the presence or absence of patient compliance. This factor alone would tend to neutralize any pharmacological evaluation.

Our investigation further uncovered that when, Mr. French, the Ciba-Geigy representative, learned that generic Hydralazine tablets were stocked at CAFB, he suggested to Dr. X that the Base could still acquire Apresoline through the VA depot, and he provided a telephone contact. The CAFB did not procure Apresoline 25 mg from the VA because DPSC advise against doing so.

Also during his vists of CAFB Mr. French suggested to Dr. X that Lemmon's Hydralazine tablets may lack the bioavailability of Ciba-Geigy's Apresoline. He gave him promotional material (attachment 2) on the bioavailability of Apresoline (hydralazine) and Apresoline-Esidrix (hydralazine HCl and hydrochlorothiazide).

During one of his visits the Ciba-Geigy representative had also discussed cost factors at CAFB and indicated to Major Bolerjack, Officer-in-Charge, Pharmacy, that in future Apresoline will probably come into the (DOD) system at $5.00 below the generic product. (Lemmon's contract expires in July 1979).

In Mid-May the dispensing of the generic Hydralazine product was discontinued because of Dr. X's recommendation and CAFB purchased Apresoline 25 mg on a direct (purchase) basis. Subsequently a report of ineffectiveness with Lemmon's Hydralazine 25 mg tablets was filed (DPSC complaint was dated May 25, 1979).

Ciba-Geigy also claimed in their supplemental statement that the Pharmaceutics and Therapeutics Committee at Andrews AFB (AAFB) had express concern over the quality of the depot-supplied Lemmon product and had decided to discontinue its use in favor of Apresoline purchased from local wholesalers. FDA interviews with professional personnel indicated that there were no incidents of problems with Lemmon's Hydralazine Tablets. Also the base complaint-file had no reports of problems with hydralazine.

Our investigations revealed that Ciba-Geigy representative had approached Major Selle, Capt. Gerald Merritt with regard to bioavailability data Capt. Merritt also referred him to Major William H. Stigelman their Chairman of the Department of Pharmacy and member of the base Pharmacy and Therapeutic Committee. We also learned that drug representatives are allowed to assemble displays of drug products in the hospital. Maj. Selle indicated these representatives pushed the brand name products over the generic product to the hospital doctors and enlisted personnel. In fact he added "He (drug firm representative) is not supposed to go to the Doctor's Offices, but they do". Capt. Merritt remembers that Ciba-Geigy representative asked permission (about 3 weeks before June 15), to use the minutes of the Pharmacy and Therapeutics Committee meeting (attachment 3) in a company publication. The permission was denied.

According to the minutes, the Pharmacy and Therapeutics Committee chose to purchase Apresoline, and three other brand name drug products in place of the generic equivalents for the following reasons:

a. No bioavailability data available (to the staff) for the generic product.

b. Confusion to the patient and staff due to differences in size, color etc. for the generic product.

c. No manufacturer's guarantee of legal support, should efficacy or adverse reaction problems arise for the generic product.

d. No company representatives with the generic product.

e. No manufacturers services such as resolving difficult questions giving toxicity data and the like.

The Pharmacy and Therapeutics Committee also considered cost factor. They concluded that there is no cost advantage to the generic product as compared to the brand name product. According to the P & T Committee minutes and Maj. Selle, the AFB is able to purchase Apresoline from the VA supply depot for less than they can purchase the generic product from the Air Force Depot.

As part of this investigation, our Philadelphia office inspected Lemmon Pharmacal Company. They found nothing that would have an effect on setting a MAC. In addition analysis of samples collected from the reported "ineffective" lots showed them to meet the compendial standards (attachment 4).

Based on the results of our investigations, we conclude that there is no support for any of the allegations made in Ciba-Geigy's supplemental submissions.

J. Joseph Belson,

[FR Doc. 79-34164 Filed 11-5-79; 8:45 am]

BILLING CODE 4110-35-M

Health Resources Administration

Annual Reports of Federal Advisory Committees; Notice of Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources Administration Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on Health Professions Education.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245-6791. Copies may be obtained from Mary S. Hill, Ph. D., Bureau of Health Manpower, Room 3-50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6681.

Dated: October 29, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-34102 Filed 11-5-79; 8:45 am]

BILLING CODE 4110-83-M

Graduate Medical Education National Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the months of November and December:

Name: Graduate Medical Education National Advisory Committee.
Date and Time: November 29-30, 1979, 8:30 a.m.
Place: Hubert H. Humphrey Building, Room 525-A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Name: Graduate Medical Education National Advisory Committee.
Date and Time: December 10-11, 1979, 8:30 a.m.
Place: Hubert H. Humphrey Building, Room 525-A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose: The Graduate Medical Education National Advisory Committee is responsible for advising and making

recommendations with respect to: (1) present and future supply and requirements of physicians by specialty and geographic location; (2) ranges and types of numbers of graduate training opportunities needed to approach a more desirable distribution of physician services; and (3) the impact of various activities which influence specialty distribution and the availability of training opportunities including systems of reimbursement and the financing of graduate medical education.

Agenda for November 29–30: A discussion of the existing GMENAC modeling work in the areas of Otolaryngology, Orthopedic Surgery, Neurosurgery, and the results of Child Care; a discussion and further review of other issues and areas (e.g., financing, educational environment, geographic concerns and nonphysician providers) anticipated for inclusion in the Final Report.

Agenda for December 10–11: Continued discussion on areas included in November agenda, as Committee moves ahead toward development of Final Report. Plan is for GMENAC modeling discussion at this meeting on additional physician specialties (e.g., Ophthalmology, Plastic Surgery and Obstetrics/Gynecology.)

Due to limited seating, attendance by the public will be provided on a first-come, first-serve basis.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Mr. Paul Schwab, Executive Secretary, Room 10–27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–7170.

Agenda items are subject to change as priorities dictate.

Dated: October 29, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-34103 Filed 11-5-79; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary—Community Planning and Development

[Docket No. N-79-959]

Community Development Block Grant Program for Indian Tribes and Alaska Natives; Dates for Submission of Pre-application

AGENCY: Office of the Assistant Secretary for Community Planning and Development (HUD).

ACTION: Notice.

SUMMARY: This Notice sets the deadline for filing pre-applications for Community Development Block Grant Discretionary Funds for Indian Tribes and Alaska Natives for Fiscal Year 1980. Pre-applications are required in order to provide HUD with sufficient information to determine which applicants will be invited to submit full applications and to save applicants the cost of preparing full applications which have no chance of being funded. Pre-applications which are submitted after the deadline will not be considered.

Final Dates for Submission

Region	No earlier than	No later than
Region I	April 2, 1980	April 16, 1980.
Region II	January 7, 1980	January 21, 1980.
Region III	November 5, 1979	November 19, 1979.
Region IV	March 3, 1980	March 14, 1980.
Region V	April 20, 1980	May 4, 1980.
Region VI	December 3, 1979	December 17, 1979.
Region VII	December 16, 1979	December 29, 1979.
Region VIII	December 3, 1979	December 17, 1979.
Region IX*	December 1, 1979	December 15, 1979.
Region X	February 18, 1980	March 3, 1980.
Alaska only	November 5, 1979	November 19, 1979.

*Regional Office may waive this deadline to February 1, 1980 in order to respond to special problems in New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Jacobson, Director, Secretary's Fund Division, Office of Policy Planning, Department of Housing and Urban Development, Washington, D.C. 20410, telephone (202) 755–6092.

SUPPLEMENTAL INFORMATION: This notice sets the deadline for submitting pre-applications as provided in 24 CFR 571.301 published by final rule on December 15, 1978 (43 FR 58734). That rule established Part 571 as a separate part applying the Community Development Block Grant Program to Indian Tribes and Alaska Natives. These dates apply only to preapplications submitted by Indian Tribes and Alaska Natives for Fiscal Year 1980.

(Section 107(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Issued at Washington, D.C., October 30, 1979.

Robert C. Embry,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79-34187 Filed 11-5-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 11159]

Oregon; Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

Correction

In FR Doc. 79–29994, appearing on page 55669 in the issue for Thursday, September 27, 1979 and corrected on page 61262 in the issue for Wednesday, October 24, 1979; second column, in the second correction, the corrected material should have read as follows: "NW¼, NE¼SW¼; NE¼NW¼SW¼"

BILLING CODE 1505-01-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Correction

In FR Doc. 79–32977, published at page 62374, on Tuesday, October 30, 1979, make the following correction:

On page 62374, in the second column, above the fifth property listed *"Acadia Parish"*, add the State **"LOUISIANA"**.

BILLING CODE 1505-01-M

National Register of Historic Places; Additions, Deletions, and Corrections

By notice in the Federal Register of February 6, 1979, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

Carol Shull,

Acting Keeper of the National Register.

The following list of properties has been added to the National Register of Historic Places since notice was last given in the February 6, 1979, Federal Register. National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; properties recorded by the Historic American Engineering Record are designated by HAER; properties receiving grants-in-aid for historic preservation are designated by G.

ALABAMA

Dallas County

Selma, *First Baptist Church*, 709 Martin Luther King, Jr. St. (9–20–79).

Jefferson County

Birmingham, *Watts Building*, 2008 3rd Ave., North (9-17-79).

ALASKA

Fairbanks Division

Chatanika, *Chatanika Gold Camp*, AK 6 (10-16-79).

Seward Division

Moose Pass vicinity, *Lauritsen Cabin*, N of Moose Pass off AK 1 (10-16-79).

Sitka Division

Sitka, *Sitka Pioneers' Home*, Katkian Ave. and Lincoln St. (10-18-79).

ARIZONA

Pima County

Tucson vicinity, *Rincon Mountain Foothills Archeological District*, SE of Tucson (10-16-79).

ARKANSAS

Pulaski County

Little Rock, *Little Rock Central Fire Station*, 520 W. Markham St. (10-18-79).
Little Rock, *Little Rock City Hall*, 500 W. Markham St. (10-18-79).
Little Rock, *Pulaski County Courthouse*, 405 W. Markham St. (10-18-79).

CALIFORNIA

Mendocino County

Boonville vicinity, *Con Creek School*, 2 mi. N of Boonville on CA 128 (10-18-79).
Ukiah, *Palace Hotel*, 271 N. State St. (10-2-79).

Orange County

Anaheim, *Carnegie Library*, 241 S. Anaheim Blvd. (10-22-79).

San Joaquin County

Tracy, *Tracy City Hall and Jail*, 25 W. 7th St. (10-18-79).

Santa Barbara County

Santa Barbara vicinity, *San Miguel Island Archeological District* (9-12-79).
Santa Barbara vicinity, *Santa Barbara Island Archeological District* (9-12-79).

Ventura County

Port Hueneme vicinity, *Anacapa Island Archeological District* (9-12-79).

COLORADO

Chaffee County

St. Elmo, *St. Elmo Historic District*, Pitkin, Gunnison, 1st., Main and Poplar Sts. (9-17-79).

Denver County

Denver, *U.S. Customhouse*, 721 19th St. (10-16-79).

El Paso County

Manitou Springs, *Barker House*, 819 Manitou Ave. (10-11-79).
Manitou Springs, *First Congregational Church*, 101 Pawnee Ave. (10-16-79).

La Plata County

Durango, *Newman Block*, 801—813 Main Ave. (10-15-79).

CONNECTICUT

Hartford County

Suffield, *Suffield Historic District*, Irregular pattern along Main St. (9-25-79).

Litchfield County

Norfolk, *Norfolk Historic District*, U.S. 44 and CT 272 (10-15-79).

New London County

Groton, *Eastern Point Historic District*, Irregular pattern along Eastern Point Rd. (10-4-79).
North Stonington vicinity, *Palmer, Luther, House*, NE of North Stonington on CT 49 (10-4-79).
Stonington, *Stonington Borough Historic District*, Off U.S. 1A (10-2-79).

Tolland County

Mansfield Center vicinity, *Spring Hill Historic District*, 928—989 Storrs Rd., 3 East Rd., 3 and 4 Beebe Lane (10-10-79).

DELAWARE

New Castle County

Christiana, *Lewden, John, House*, 107 E. Main St. (9-24-79).
Christiana, *Public School No. 111-C*, DE 7 (10-18-79).

Sussex County

Frankford, *Chandler, Capt. Ebe, House*, Main and Reed Sts. (9-20-79).
Georgetown vicinity, *Pepper, Carlton, David, Farm*, S of Georgetown on SR 469 (9-24-79).

DISTRICT OF COLUMBIA

Washington

Codman-Davis House, 2145 Decatur Pl., NW. (10-11-79).

GEORGIA

Clarke County

Athens, *Morton Building*, 199 W. Washington St. (10-22-79).

HAWAII

Kauai County

Kilauea vicinity, *Kilauea Point Lighthouse*, N of Kilauea (10-18-79).
Puhi, *Grove Farm Company Locomotives*, Off HI 50 (9-19-79).

IDAHO

Bingham County

Blackfoot, *Idaho Republican Building*, 167 W. Bridge St. (10-16-79).

Nez Perce County

Lewiston, *Lewiston Methodist Church*, 803 6th Ave. (9-20-79).

Oneida County

Malad City, *United Presbyterian Church*, 7 S. Main St. (10-16-79).

ILLINOIS

Lake County

Millburn, *Millburn Historic District*, U.S. 45, Millburn and Grass Lake Rds. (9-18-79).

Macon County

Mount Zion vicinity, *Ulery, Eli, House*, SE of Mount Zion on SR 60 (10-1-79).

Sangamon County

Springfield, *Weber, Howard K., House*, 925 S. 7th St.

INDIANA

Allen County

Fort Wayne, *Strunz, Christian G., House*, 333 E. Berry St. (10-4-79).

St. Joseph County

Mishawaka, *Kamm and Schellinger Brewery*, 100 Center St. (10-11-79).

Vanderbaugh County

Evansville, *Alhambra Theatorium*, 50 Adams Ave. (10-1-79).
Evansville, *Greyhound Bus Terminal*, 102 NW. 3rd St. (10-1-79).
Evansville, *McCurdy Building (Sears, Roebuck and Company Building)* 101 NW. 4th St. (10-1-79).

IOWA

Adair County

Greenfield, *Warren Opera House Block and Hetherington Block*, 156 Public Sq. (10-18-79).

Allamakee County

Lansing, *Kerndt, G., Brothers Elevator and Warehouses, No. 11, 12 and 13*, Front St. (10-18-79).

Butler County

Parkersburg, *Wolf, Charles, House*, 401 5th St. (10-1-79).

Cerro Gordo County

Mason City, *Rule, Duncan, House*, 321 2nd St., SE. (10-18-79).

Clinton County

Clinton, *Curtis, George M., House*, 420 S. 5th Ave. (10-1-79).
Clinton, *Lamb, Lafayette, House*, 317 7th Ave. South (10-18-79).

Dubuque County

Dubuque, *Dubuque Freight House*, E. 3rd St. (10-11-79).

Linn County

Lisbon, *Stuckslager, Harrison, House*, 207 N. Jackson St. (10-1-79).

Lyon County

Rock Rapids, *Lyon County Courthouse*, 3rd and Story Sts. (10-1-79).

Monona County

Onawa, *Onawa Public Library*, Iowa Ave. and 7th St. (10-1-79).

Pottawattamie County

Council Bluffs, *Tulleys, Lysander W., House*, 151 Park Ave. (10-18-79).

Poweshiek County

Brooklyn, *Brooklyn Hotel;* 154 Front St. (10–1–79).
Grinnell, *Grinnell, Levi P., House,* 1002 Park St. (10–1–79).
Montezuma, *New Carroll House Hotel,* E. Main and 5th Sts. (10–1–79).

Warren County

Palmyra, *Palmyra Methodist Episcopal Church* (10–1–79).

Woodbury County

Sioux City, *Sioux City Baptist Church,* 1301 Nebraska Ave. (10–22–79).

KENTUCKY

Fayette County

Athens, *Athens Historic District,* Athens-Boonesboro Pike (10–11–79).
Lexington, *Price, Pugh, House,* 2245 Liberty Rd. (9–25–79).
Lexington, *Price, Williamson, House,* 2497 Liberty Rd. (9–25–79).

Jefferson County

Anchorage vicinity, *Dorsey-O'Bannon-Hebel House,* E of Anchorage at 13204 Factory Lane (9–25–79).

Nelson County

Lenore vicinity, *Archeological Site 15 Ne 3* (9–27–79).

Anroscoggin County

Lewiston, *Healey Asylum,* 81 Ash St. (10–1–79).
Lisbon vicinity, *Cushman Tavern,* NE of Lisbon on ME 9 (10–9–79).

Cumberland County

Portalnd, *St. Lawrence Church,* 76 Congress St. (10–1–79).

Kennebec County

Sidney vicinity, *Powers House,* S of Sidney on ME 104 (10–1–79).

Lincoln County

Medomak vicinity, *Weston, Daniel, Homestead,* W of Medomak on ME 32 (10–1–79).

Penobscot County

Bangor, *Hamlin, Hannibal, House,* 15 5th St. (10–9–79).

Piscataquis County

Guilford, *Hudson, H., Law Office,* Hudson Ave. (10–9–79).

Washington County

Machias, *Perry, Clark, House,* Court St. (10–9–79).

York County

Kittery, *Rice Public Library,* 8 Wentworth St. (10–1–79).
Kittery Point, *Bray House,* Pepperrell Rd. (10–9–79).
North Waterboro vicinity, *Elder Grey Meetinghouse,* N of North Waterboro (10–9–79).
Saco, *Saco City Hall,* 300 Main St. (10–9–79).

MARYLAND

Allegany County

Cumberland, *Canada Hose Company,* 400–402 N. Mechanic St. (9–21–79).

Baltimore (independent city)

Kernan, James Lawrence, Hospital, Windsor Mill Rd. and Forest Park Ave. (9–24–79) (also in Baltimore County).
Public School No. 25 (Capt. Henry Fleete School) S. Bond St. (9–25–79).
Public School No. 37 (Patrick Henry School) E. Biddle St. and N. Patterson Park Ave. (9–25–79).
Public School No. 99 (Columbus School) E. North Ave. and N. Washington St. (9–25–79).
Public School No. 109 (Broadway School) N. Broadway and Ashland Ave. (9–25–79).
Public School No. 111 (Francis Ellen Harper School) N. Carrollton Ave. and Riggs Rd. (9–25–79).

Baltimore County

KERNAN, JAMES LAWRENCE, HOSPITAL. Reference—see Baltimore (independent city).
Reisterstown, *St. Michael's Church,* Academy Lane and Reisterstown Rd. (10–22–79).

Cecil County

Perryville vicinity, *Woodlands,* E of Perryville on MD 7 (9–24–79).

Charles County

Port Tobacco vicinity, *Ellerslie,* W of Port Tobacco on MD 6 (9–24–79).

Fredrick County

Frederick vicinity, *Saleaudo,* S of Frederick off MD 28 (9–24–79).
Walkersville vicinity, *Woodsboro and Frederick Turnpike Company Tollhouse,* 1 mi. S of Walkersville off MD 194 (9–24–79).

Harford County

Aberdeen vicinity, *Winsted,* N of Aberdeen at 3844 W. Chapel Rd. (9–19–79).

Montgomery County

Brookeville, *Brookeville Historic District,* MD 97 (10–11–79).

Prince Georges County

Laurel, *Avondale Mill,* 21 Avondale St. (9–20–79).

Washington County

Beaver Creek vicinity, *Doub's Mill Historic District,* SW of Beaver Creek on Beaver Creek Rd. (10–1–79).
Boonsboro vicinity, *Ingram-Schipper Farm,* N of Boonsboro (9–24–79).
Eakles Mills vicinity, *Snively Farm,* N of Eakles Mills on Mt. Briar Rd. (9–24–79).
Hagerstown, *South Prospect Street Historic District,* 18–278 S. Prospect St. (10–1–79).
Hagerstown vicinity, *Antietam Hall,* 525 Indian Lane (9–24–79).
Leitersburg vicinity, *Bell-Varner House,* SE of Leitersburg on Unger Rd. (9–24–79).
Sanmar, *Manheim,* San Mar Rd. (9–25–79).
Williamsport vicinity, *Tammany,* NE of Williamsport off U.S. 11 (9–24–79).

Worcester County

Snow Hill vicinity, *Nun's Green,* S of Snow Hill on Cherrix Rd. (9–20–79).

MASSACHUSETTS

Bristol County

New Bedford, *North Bedford Historic District,* Roughly bounded by Summer, Park, Pleasant, and Kempton Sts. (9–19–79).

Essex County

Beverly, *Beverly Depot,* Park St. (10–11–79).
Lynn, *High Rock Tower-High Rock Cottage and Daisy Cottage,* Off MA 107 (10–11–79).

Suffolk County

Boston, *Commonwealth Pier Five,* 165 Northern Ave. (10–10–79).

MICHIGAN

Berrien County

Niles, *Niles Railroad Depot,* 598 Dey St. (9–19–79).

Oakland County

Farmington, *Botsford Inn,* 28000 Grand River Ave. (9–19–79).

MINNESOTA

Carver County

Waconia vicinity, *Peterson, Andrew, Farmstead,* NE of Waconia on MN 5 (10–11–79).

Hennepin County

Rockford, *Ames-Florida House,* 8131 Bridge St. (10–16–79).

Murray County

Avoca, *Avoca Public School,* Cole Ave. and 2nd St. (10–16–79).
Fulda, *Chicago, Milwaukee, St. Paul, and Pacific Depot,* Off MN 62 (10–16–79).

Redwood County

Morgan vicinity, *St. Cornelia's Episcopal Mission Church,* Off SR 2 (10–11–79).

MISSISSIPPI

Adams County

Natchez, *Natchez On-Top-of-the Hill Historic District,* U.S. 61, U.S. 84 and U.S. 98 (9–17–79).

MISSOURI

Boone County

Columbia, *Wabash Railroad Station and Freight House,* 126 N. 10th St. (10–11–79).

Buchanan County

St. Joseph, *Missouri Theater and Missouri Theater Building,* 112–128 S. 8th St. and 713–721 Edmond St. (10–11–79).

Cape Girardeau County

Cape Girardeau, *Glenn House,* 325 S. Spanish St. (10–11–79).

Carroll County

Carrollton, *Carroll County Sheriff's Quarters and Jail,* 101 W. Washington St. (10–11–79).

Clark County

Wayland vicinity, *Sickles Tavern,* NW of Wayland on MO B (10–22–79).

Jackson County

Kansas City, *Kansas City Athenaeum*, 900 E. Linwood Blvd. (10-11-79).

Lafayette County

Lexington, *Waddell House*, 1704 South St. (10-11-79).

Macon County

Macon, *Blees Military Academy*, U.S. 63 (10-11-79).

Nodaway County

Maryville, *Nodaway County Courthouse*, 3rd and Main Sts. (10-11-79).

Ray County

Richmond, *Ray County Courthouse*, Off MO 10 and MO 13 (10-11-79).

St. Charles County

St. Charles *Marten-Becker House*, 837 First Capitol Dr. (10-11-79).

St. Louis (independent city)

Mayfair Hotel, 806 St. Charles Ave. (9-17-79).
St. Liborius Church and Buildings, 1835 N. 18th St. (10-11-79).

MONTANA

Custer County

Miles City vicinity, *Waterworks Building and Pumping Plant Park*, W of Miles City on Pumbing Plant Rd. (9-26-79).

Missoula County

Missoula, *Higgins Block (C. P. Higgins' Western Bank)* 202 N. Higgins Ave. (10-1-79).

Yellowstone County

Billings, *Yegen, Christian, House*, 208 S. 35th St. (10-1-79).

NEBRASKA

NINETEENTH CENTURY TERRACE HOUSES THEMATIC RESOURCES. Reference—see individual listings under Lancaster County.

Butler County

Dwight, *Fremont, Elkhorn and Missouri Valley Railroad Depot*, 1st and Maple Sts. (10-11-79).

Douglas County

Omaha, *Douglas County Courthouse*, 1700 Farnam St. (10-11-79).
Omaha, *Omaha High School*, 124 N. 20th St. (10-11-79).

Greeley County

Scotia, *Scotia Chalk Building*, Off NE 22 (10-11-79).

Lancaster County

Lincoln, *Baldwin Terrace (Nineteenth Century Terrace Houses Thematic Resources)* 429—443 S. 12th St. and 1134—1142 K St. (10-1-79).
Lincoln, *Barr Terrace (Nineteenth Century Terrace Houses Thematic Resources) 627—643 S. 11th St. and 1044 H St.* (10-1-79).
Lincoln, *Helmer-Winnett-White Flats (Nineteenth Century Terrace Houses Thematic Resources)* 1022—1028 K St. (10-1-79).
Lincoln, *Lyman Terrace (Nineteenth Century Terrace Houses Thematic Resources)* 1111—1119 H St. (10-1-79).

NEW HAMPSHIRE

Cheshire County

Rindge, *Second Rindge Meetinghouse, Horsesheds and Cemetery*, U.S. 202 (10-5-79).

Hillsborough County

Manchester, *Zimmerman House*, 223 Heather St. (10-18-79).

Merrimack County

Concord, *Pierce, Franklin, House*, 52 S. Main St. (10-15-79).

NEW JERSEY

Middlesex County

Perth Amboy, *Inness, George, House*, 313 Convery Blvd. (10-10-79).
Spotswood, *St. Peter's Church and Buildings*, Main St. and DeVoe Ave. (10-10-79).

Morris County

Fayson Lakes, *Fredericks House*, 6 Duchess Dr. (10-18-79).

Somerset County

Somerville vicinity, *Van Veghten House*, S of Somerville off NJ 28 (10-10-79) HABS.

NEW YORK

MOVIE PALACES OF THE TRI-CITIES THEMATIC RESOURCES. Reference—see individual listings under Albany, Rensselaer and Schenectady Counties.
NEW YORK STATE ROUTE NINE, TOWN OF COLONIE MULTIPLE RESOURCE AREA (Partial Inventory) This area includes various properties at various locations. Details available upon request. (10-4-79).

Albany County

Albany, *Palance Theatre (Movie Palaces of the Tri-Cities Thematic Resources)* 19 Clinton Ave. (10-4-79).

Columbia County

Linlithgo vicinity, *Teviotdale*, S of Linlithgo on Wire Rd. (10-10-79).

Niagara County

Niagara Falls, *Holley-Rankine House*, 525 Riverside Dr. (10-4-79).

Ontario County

Geneva, *Smith's Opera House*, 82 Seneca St. (10-10-79).

Rensselaer County

Troy, *Proctor's Theatre (Movie Palaces of the Tri-Cities Thematic Resouces)* 82 4th St. (10-4-79).

Schenectady County

Schenectady, *Proctor's Theatre and Arcade (Movie Palaces of the Tri-Cities Thematic Resources)* 432 State St. (10-4-79).

NORTH CAROLINA

Ashe County

Glendale Springs, *Glendale Springs Inn*, NC 16 and SR 1632 (10-10-79).

Buncombe County

Black Mountain vicinity, *Blue Ridge Assembly Historic District*, S of Black Mountain on SR 2720 (9-17-79).

Chowan County

Edenton, *Edenton Peanut Factory*, E. Church St. (9-20-79) HAER.

Greene County

Snow Hill, *St. Barnabas Episcopal Church*, SE. 4th St. and St. Barnabas Rd. (10-10-79).

Halifax County

Enfield, *Cellar, The*, 404 Whitfield St. (9-20-79).

Johnston County

Kenly vicinity, *Boyette Slave House*, NW of Kenly on SR 2110 (9-20-79).

Martin County

Williamston, *Biggs, Asa, House and Site*, 100 E. Church St. (10-10-79).

Onslow County

Palopato, *Palo Alto Plantation*, SR 1434 (10-10-79).

Vance County

Kittrell vicinity, *Crudup, Josiah, House*, S of Kittrell on U.S. 1 (9-25-79).

Wake County

Raleigh *Masonic Temple Building*, 133 Fayetteville St. Mall (9-17-79).

NORTH DAKOTA

Barnes County

Valley City, *Valley City Carnegie Library*, 413 Central Ave. (10-18-79).

Cass County

Fargo, *deLendrecie's Department Store*, 620—624 Main Ave. (10-22-79).
Fargo, *Lewis House*, 1002 3rd Ave. South (10-18-79).

Ransom County

Lisbon, *Lisbon Opera House*, 413 Main Ave. (10-18-79).

Traill County

Mayville, *Stomner House*, 32 3rd St. NE. (10-11-79).

Williams County

Williston, *Old U.S. Post Office*, 322 Main Ave. (10-22-79).

OHIO

Butler County

Oxford, *Western Female Seminary*, U.S. 27 and OH 73 (9-17-79).

Cuyahoga County

Brookpart vicinity, *Danalds, Samuel, House*, 6511 Ruple Rd. (10-11-79).

Hamilton County

Cincinnati, *Davidson, Tyler, Fountain,* 5th St. (10–11–79).

Muskingum County

Zanesville vicinity, *Tanner, William C., House,* NW of Zanesville (9–17–79).

Wood County

Rossford, *Indian Hills Site* (9–20–79).

OKLAHOMA

Atoka County

Atoka, *Indian Citizen Building (Atoka Citizen-Democrat Newspaper Office)* 115 N. Ohio Ave. (10–4–79).

Canadian County

El Reno vicinity, *Mennoville Mennonite Church,* N of El Reno on U.S. 81 (10–4–79).

Comanche County

Medicine Park, *Medicine Park Hotel and Annex,* E. Lake Dr. (9–25–79).

Creek County

Bristow, *Bristow Presbyterian Church,* 6th and Elm Sts. (10–3–79).

Garvin County

Wynnewood, *Eskridge Hotel,* 114 E. Robert S. Kerr St. (10–3–79).

Kay County

Kaw City vicinity, *Kaw City Depot,* W of Kaw City on Washungah Dr. (10–3–79).
Newkirk vicinity, *Bryson Archeological Site,* 6.5 mi. NE of Newkirk (9–20–79).

Oklahoma County

Oklahoma City, *Bourne Dairy,* 5801 Eastern St. (10–3–79).
Oklahoma City, *Magnolia Petroleum Building,* 722 N. Broadway St. (10–4–79).
Oklahoma City, *Skirvin Hotel,* 1 Park Ave. (10–10–79).

Pittsburg County

Indianola, *Choate Cabin,* 2nd and Walnut Sts. (10–3–79).
Pittsburg, *Southern Ice and Cold Storage Company,* 338 E. Choctaw Ave. (10–11–79).

Roger Mills County

Hammon, *Dorroh-Trent House,* 11th and Conley Sts. (10–3–79).

OREGON

Benton County

Corvallis, *Caton, Jesse H., House,* 602 NW. 4th St. (9–27–79).
Monroe, *Belknap, Ransom A., House,* W of Monroe (9–27–79).

Coos County

Bandon vicinity, *Philpott Site (35 CS 1)* (10–18–79).
Myrtle Point, *Reorganized Church of Latter Day Saints,* 7th and Maple Sts. (10–18–79).

Deschutes County

Bend, *Reid School,* 460 NW. Wall St. (10–16–79).

Hood River County

Hood River vicinity, *Columbia Gorge Hotel,* W of Hood River at 9000 Westcliffe Dr. (9–21–79).

Jackson County

Ashland, *Atkinson, W. H., House,* 125 N. Main St. (10–16–79).
Ashland, *Woolen, Isaac, House,* 131 N. Main St. (10–16–79).
Central Point vicinity, *Beall, Robert Vinton, House,* S of Central Point at 1253 Beall Lane (10–18–79).

Lane County

Florence vicinity, *Benedick, Edwin E., House,* E of Florence on Cox Island (10–18–79).

Marion County

Jefferson, *Anderson, James Mechlin, House,* Off I–5 (10–16–79).
St. Paul, *St. Paul Roman Catholic Church,* Off OR 219 (10–16–79).

Multnomah County

Portland, *Espey Boarding House,* 2601–2605 SW. Water Ave. (9–19–79).

Yamhill County

Dayton, *First Baptist Church,* 3rd and Main Sts. (10–16–79).
Yamhill, *Bunn, John Marion, House,* 285 SW. 3rd St. (10–16–79).

PENNSYLVANIA

Bucks County

Erwinna, *Stover Mill,* PA 32 (10–18–79).

Centre County

Milesburg vicinity, *Harmony Forge Mansion,* S of Milesburg on PA 144 (10–16–79).
Philipsburg, *Rowland Theatre,* Front St. (10–18–79).

Indiana County

Indiana, *Old Indiana County Jail and Sheriff's Office,* 6th St. and Nixon Ave. (9–27–79).

Lancaster County

Lancaster, *Hager Building,* 25 W. King St. (10–16–79).
Lancaster, *Steinman Hardware Store,* 26–28 W. King St. (10–18–79).

Montgomery County

Jenkintown, *Jenkins' Town Lyceum Building,* Old York and Vista Rds. (10–16–79).

RHODE ISLAND

Newport County

Tiverton vicinity, *Book-Bateman Farm,* S of Tiverton at Fogland Puncatest Neck Rds. (10–11–79).

SOUTH CAROLINA

Charleston County

Folly Beach vicinity, *Secessionville Historic District,* N of Folly Beach (10–1–79).

SOUTH DAKOTA

Clay County

Vermillion, *Forest Avenue Historic District,* Forest Ave. and Lewis St. (10–18–79).

Yankton County

Yankton vicinity, *Western Portland Cement Plant* (9–19–79).

Knox County

Knoxville, *Holston National Bank,* 531 S. Gay St. (10–2–79).

Moore County

Lynchburg, *Moore County Courthouse and Jail,* Court Sq. (9–26–79).

Shelby County

Memphis, *Hayley, Patrick H., House,* 604 Vance Ave. (10–10–79).
Memphis, *Pinch-North Main Commercial District,* Roughly bounded by N. Front and N. 2nd Sts., Commerce and Auction Aves. (10–18–79).

TEXAS

Coryell County

Copperas Cove vicinity, *Copperas Cove Stagestop and Post Office,* 1.6 mi. SW of Copperas Cove off U. S. 190 (9–26–79).

Hardeman County

Quanah, *Quanah, Acme and Pacific Depot,* 100 Mercer St. (10–15–79).

Llano County

Llano, *Southern Hotel,* 201 W. Main St. (10–10–79).

Palo Pinto County

Palo Pinto, *Palo Pinto County Jail,* Elm St. and 5th Ave. (9–26–79).

Shackelford County

Fort Griffin vicinity, *Fort Griffin Brazos River Bridge,* NE of Fort Griffin (10–16–79).

Tarrant County

Fort Worth, *Eddleman-McFarland House,* 1110 Penn St. (10–18–79).

Victoria County

Victoria, *Callender House,* 404 W. Guadelupe St. (9–26–79) HABS.

Wise County

Chico, *Brown, J. T., Hotel,* E. Decatur St. (10–16–79).

UTAH

Cache County

Wellsville, *Howell-Theurer House,* 30 S. 100 East (10–18–79).

Emery County

Huntington, *Huntington Roller Mill and Miller's House,* 400 North St. (9–27–79).

Salt Lake County

Riverton, *Dansie, George Henry, Farmstead,* 12494 S. 1700 West (9–27–79).
Salt Lake City, *Whipple, Nelson Wheeler, House,* 564 W. 400 North (9–26–79).

VERMONT

Chittenden County

Burlington, *Wells, Edward, House,* 61 Summit St. (10–3–79).

Rutland County

Healdville vicinity, *Crowley Cheese Factory*, SW of Healdsville on Healdville Rd. [10-11-79].

VIRGINIA

Fairfax County

Great Falls vicinity, *Patowmack Canal Historic District*, E of Great Falls [10-18-79] HAER.

Hopewell (independent city)

City Point Historic District, Off VA 10/156 [10-15-79].

Lynchburg (independent city)

Diamond Hill Historic District, Roughly bounded by Dunbar Dr., Main, Jackson and Arch Sts. [10-1-79].

Montgomery County

Christiansburg vicinity, *Yellow Sulphur Springs*, N of Christiansburg on VA 643 [9-20-79].

Richmond (independent city)

Byrd Theatre, 2908 W. Cary St. [9-24-79].
Central National Bank, 3rd and Broad Sts. [9-20-79].

WASHINGTON

Clark County

Heisson, *Heisen, Henry, House*, 27904 NE. 174th Ave. [10-4-79].
Ridgefield, *Shobert, William Henry, House*, 621 Shobert Lane [10-4-79].
Ridgefield vicinity, *Arndt Prune Dryer*, SE of Ridgefield at 2109 NW. 219th St. [10-4-79].

King County

Seattle, *Summit School*, E. Union st. and Summit Ave. [10-4-79].

Pacific County

Ocean Park, *Wreckage, The*, 256th Pl. [9-18-79].

Stevens County

Northport, *Northport School*, South and 7th Sts. [10-4-79].

WEST VIRGINIA

Berkeley County

Martinsburg, *Apollo Theatre*, 128 E. Martin St. [10-11-79].

Harrison County

Clarksburg, *Stealey-Goff-Vance House*, 123 W. Main St. [9-25-79].

WISCONSIN

Ashland County

Mellen, *Mellen City Hall*, Bennett and Main Sts. [9-20-79].

Dodge County

Watertown vicinity, *Schoenicke Barn*, NE of Watertown on Venus Rd. [9-19-79].

Jefferson County

Busseyville vicinity, *Carcajou Point (47 Je 2)* [9-18-79].

Rock County

Beloit, *Emerson Hall*, Beloit College campus [9-20-79].

Walworth County

Lake Geneva, *Younglands*, 880 Lake Shore Dr. [9-18-79].

THE FOLLOWING IS A LIST OF CORRECTIONS TO PROPERTIES PREVIOUSLY LISTED IN THE FEDERAL REGISTER. ADDITIONAL CORRECTIONS MAY APPEAR IN SUBSEQUENT UPDATES.

FLORIDA

Walton County

DeFuniak Springs, *Chautauqua Hall of Brotherhood*, Circle Dr. [8-7-72] (previously listed as Chautauqua Auditorium).

WISCONSIN

Brown County

Green Bay vicinity, *Fort Howard Buildings*, Heritage Hill State Park [7-22-79] (previously listed individual as Fort Howard Hospital, Kellogg St. and N. Chestnut Ave.; Fort Howard Ward Building, 402 N. Chestnut Ave.; Fort Howard Officers Quarters, 402 N. Chestnut Ave.).

* * * * *

THE FOLLOWING PROPERTIES HAVE BEEN DEMOLISHED AND/OR REMOVED FROM THE NATIONAL REGISTER OF HISTORIC PLACES. THIS ACTION DOES NOT MODIFY THE APPLICABILITY, IF ANY, OF PROVISIONS OF SECTION 2124 OF THE TAX REFORM ACT.

HAWAII

Honolulu County

Wahiawa, *Dole, James D., Homestead*, 148 Dole Rd. [6-23-78] (removed).

KENTUCKY

Campbell County

Newport, *Jones, Thomas and Mary, House (Mount St. Martin)* 15th and Monmouth Sts. [1-17-76] (demolished).

* * * * *

Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requestion determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR Part 800. Properties determined to be eligible under § 63.3 of the procedures for requestion determinations of eligibility are designated by (63.3).

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before any agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation, shall be given an opportunity to comment on the proposal.

The following list of additions, deletions, and corrections to the list of properties determined eligible for inclusion in the National Register is intended to supplement the cumulative version of that list published in February of each year.

ALASKA

Anchorage Division

Anchorage, *Potter Section House*, Seward Hwy.

CALIFORNIA

Monterey County

Monterey, *Hovden Cannery*, 886 Cannery Row (63.3).

San Francisco County

San Francisco, *U.Y.C.A. Building*, 940 Powell St. (63.3).

COLORADO

El Paso County

Colorado Springs, *Building at 2801 Colorado Street.*
Colorado Springs, *Building at 2802 Colorado Street.*
Colorado Springs, *Building at 2902 Colorado Street.*

Garfield County

Archeological Site 5GF110 (63.3).

DELAWARE

New Castle County

Stanton vicinity, *Delaware Park Site (7NC-E-41)* (63.3).

GEORGIA

Rabun County

Chattooga River Bridge, SR 76 [also in Oconee County, SC].

MICHIGAN

Genesee County

Fenton, *Fenton Grain Elevator*, 234 N. Leroy St. (63.3).

MISSOURI

Dunklin County

Kennett, *Archeological Site 23DU244* (63.3).

NEW HAMPSHIRE

Sullivan County

Claremont, *River Street Site Historic District.*

NEW JERSEY

Warren County

Hackettstown, *Hackettstown Historic District.*

NEW YORK

Oswego County

Oswego, *West First Street Block*, 109–123 W. 1st St. (63.3).

NORTH CAROLINA

Edgecombe County

Tarboro, *Tarboro Historic District* (63.3).

NORTH DAKOTA

Hettinger County

Mott, *Mott Rainbow Arch Bridge*, spans the Cannonball River.

OHIO

Hamilton County

Cincinnati, *Nassau-Eden Historic District.*

OKLAHOMA

Kay County

Uncas, *Uncas Site 34KA172* (63.3).

PENNSYLVANIA

Allegheny County

Natrona, *Pennsylvania Salt Manufacturing Company Housing District.*

SOUTH CAROLINA

Oconee County

CHATTOOGA RIVER BRIDGE. Reference—see Rabun County, GA.

WISCONSIN

Milwaukee County

Milwaukee, *Milwaukee Metropolitan Sewage Treatment Plant*, 700 E. Jones St. (63.3).

Racine County

Racine, *Building at 231 South Main Street* (63.3).

Racine, *Buildings at 401, 425, and 427 Lake Avenue.*

[FR Doc. 79-33911 Filed 11-5-79; 8:45 am]

BILLING CODE 4310-03-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before October 26, 1979. Pursuant to section 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted on or before November 16, 1979.

Carol Shull,

Acting Chief, Registration Branch.

ALABAMA

Macon County

Tuskegee, *Grey Columns*, 399 Old Montgomery Rd.

ARIZONA

Maricopa County

Phoenix, *Adams School*, 800 W. Adams.

Yavapai County

Prescott, *Hassayampa Hotel*, 122 E. Gurley St.

CALIFORNIA

Humboldt County

Arcata, *Whaley House*, 1395 H Street.

Santa Clara County

Palo Alto, *Wilson House*, 860 University.

MARYLAND

Montgomery County

Glen Echo, *Clara Barton National Historic Site*, 5801 Oxford Rd.

MISSISSIPPI

Jackson County

Ocean Springs, *Louisville and Nashville RR. Depot at Ocean Springs*, 1000 Washington Ave.

Noxubee County

Shuqualak, *Central Shuqualak Historic District*, Blocks 9, 10, 15, 16, 21, and 22.

NEBRASKA

Lancaster County

Lincoln, *Phillips, R. O., House*, 1845 D St.

NEW HAMPSHIRE

Merrimack County

Hopkinton, *Hopkinton RR. Covered Bridge (Contoocook RR. Bridge)*, E of NH 103 and NH 127 at Contoocook Village.

NEW JERSEY

Middlesex County

Edison, *Thomas A. Edison Memorial Tower*, Christie St.

NEW YORK

Montgomery County

Amsterdam, *Greene Mansion*, 92 Market St.

New York County

New York, *Association of the Bar of the City of New York*, 42 W. 44th St.

New York, *First Houses*, 112—114, 118—120, 124—126, 130—132, 136—138 E. 3rd St. and 21, 31, 33—35, 37, 39, 44 Avenue A.

New York, *Harlem River Houses*, 151st St. to 153rd St., Macombs Pl./Harlem River Dr.

New York, *House at 376—380 Lafayette Street.*

New York, *Park Avenue House*, 680, 684, 686, and 690 Park Ave.

Queens County

Queens, *Office of the Register (Jamaica Arts Center*, 161-04 Jamaica Ave.

Westchester County

Ossining, *Brandreth Pill Factory*, Water St.

Peekskill, *Drum Hill High School*, Ringold St.

NORTH CAROLINA

Catawba County

Catawba, *Murray's Mill Historic District*, SE of NC 10 on SR 1003.

OHIO

Allen County

Lima, *Metropolitan Block*, 300 N. Main St.

Athens County

Athens, *Athens Governmental Buildings*, 100 E. State St.; jct. of Court and Washington Sts.; 10 E. Washington St., W. Union St.

Auglaize County

New Bremen, *Boesel, Adolph, House*, 100 S. Franklin.

Butler County

Oxford, *Herron Gymnasium*, Miami University campus.

Oxford, *Maltby, Henry, House*, 216 E. Church St.

Cuyahoga County

Cleveland, *Hruby Conservatory of Music*, 5417 Broadway.

Fairfield County

Lancaster, *Hock-Hocking Wine Cellar*, 201 S. High St.

Sugar Grove vicinity, *Crawfis Institute*, Crawfis Rd. and Old Sugar Grove Rd.

Franklin County

Gahanna, *Shepard Street School (Gahanna Nursing Home)*, 106 Short St.

Westerville, *Otterbein Mausoleum*, W. Walnut St. at Otterbein Cemetery.

Hamilton County

Cincinnati, *Lincoln School*, 455 Delta Ave.

Cincinnati, *Madam Fredin's Eden Park School and Neighboring Row House*, 938—946 Morris St. and 922—932 Morris St.

Cincinnati, *Thomson, Peter G., House (Laurel Court)*, 5870 Belmont Ave.

Jackson County

Pattonsville vicinity, *Keystone Furnace*, SR 9.

Knox County

Bladensburg, *Mill Road Bowstring Bridge*, Mill Rd.

Licking County

Newark, *Courthouse Center*, 35—37 Park Pl. and jct. of S. Park and S. 2nd St.

Newark, *Pennsylvania Railway Station*, 25 E. Walnut St.

Mahoning County

Youngstown, *Warner Theater*, 260 W. Federal Plaza.

Medina County

Valley City, *Parmelee House*, 1328 W. River Rd.

Montgomery County

Kettering, *Deed's Barn*, 35 Moraine Circle South (moved).

Muskinguin County

Roseville vicinity, *Rider, Adam, House*, 9350 Athens Rd.
Trinway, *Adams, George W., House*, Bottom Rd.

Pickaway County

Circleville, *Anderson, Willian Marshall, House*, 131 W. Union St.

Richland County

Mansfield, *St. Peters Church*, 54 S. Mulberry St.

Ross County

Chillicothe vicinity, *Higby House*, Three Locks Rd.

Seneca County

Kansas vicinity, *Michaels Farm*, 7249 N SR 635.

Stark County

Navarre, *Loew-Define Grocery Store and Home*, 202 S. Market St.

Union County

Irwin, *Elmwood Place*, 23855 OH 161.

Washington County

Archer's Fork, *Waernicke—Hille House and Store*, SR 36.
Coal Run, *Mason House*, OH 393.

Wayne County

Wooster vicinity, *Wayne County Home*, 876 Geyers Chapel Rd.

PENNSYLVANIA

Lehigh County

Upper Saucon Township, *Linden Grove Pavilion*, Linden and S. Main Sts.

SOUTH CAROLINA

Charleston County

Charleston, *Smith, Josiah, Tennent House*, 729 E. Bay St.

TENNESSEE

Davidson County

Nashville, *Sudekum Building*, 535 Church St.

Shelby County

Germantown, *Germantown Redoubt Site*,, C. D. Smith Rd.
Memphis, *Capt. Harris House*, 2106 Young.
Memphis, *Crump, E. H., House*, 1962 Peabody St.

VIRGINIA

Botetourt County

Fincastle vicinity, *Prospect Hill*, E of Church St., SW of VA 606.

Charles City County

New Hope vicinity, *Kittiewan*, 2.5 mi. SE of New Hope, S of jct. of VA 5 and VA 619.

Northumberland County

Heathsville, *Springfield*, VA 360.
Heathsville, *St. Stephen's Church*, VA 360.

Orange County

Orange, *Orange County Courthouse*, jct. of Madison Rd. and N. Main St.

Pittsylvania County

Oak Ridge vicinity, *Oak Hill*, VA 863.

Surry County

Gwaltney Corner vicinity, *Snow Hill*, S of jct. of VA 612 and VA 40 on W side of VA 40.

WEST VIRGINIA

Ohio County

Wheeling, *Wheeling Historic District*, between 10th and 17th Sts. and between Eoff and Water Sts.

WISCONSIN

Manitowoc County

Two Rivers vicinity, *Point Beach Archeological District*.

[FR Doc. 79-33910 Filed 11-5-79; 8:45 am]
BILLING CODE 4310-03-M

National Park Service

Publication of a Boundary Map; Springfield Armory National Historic Site; Springfield, Mass.

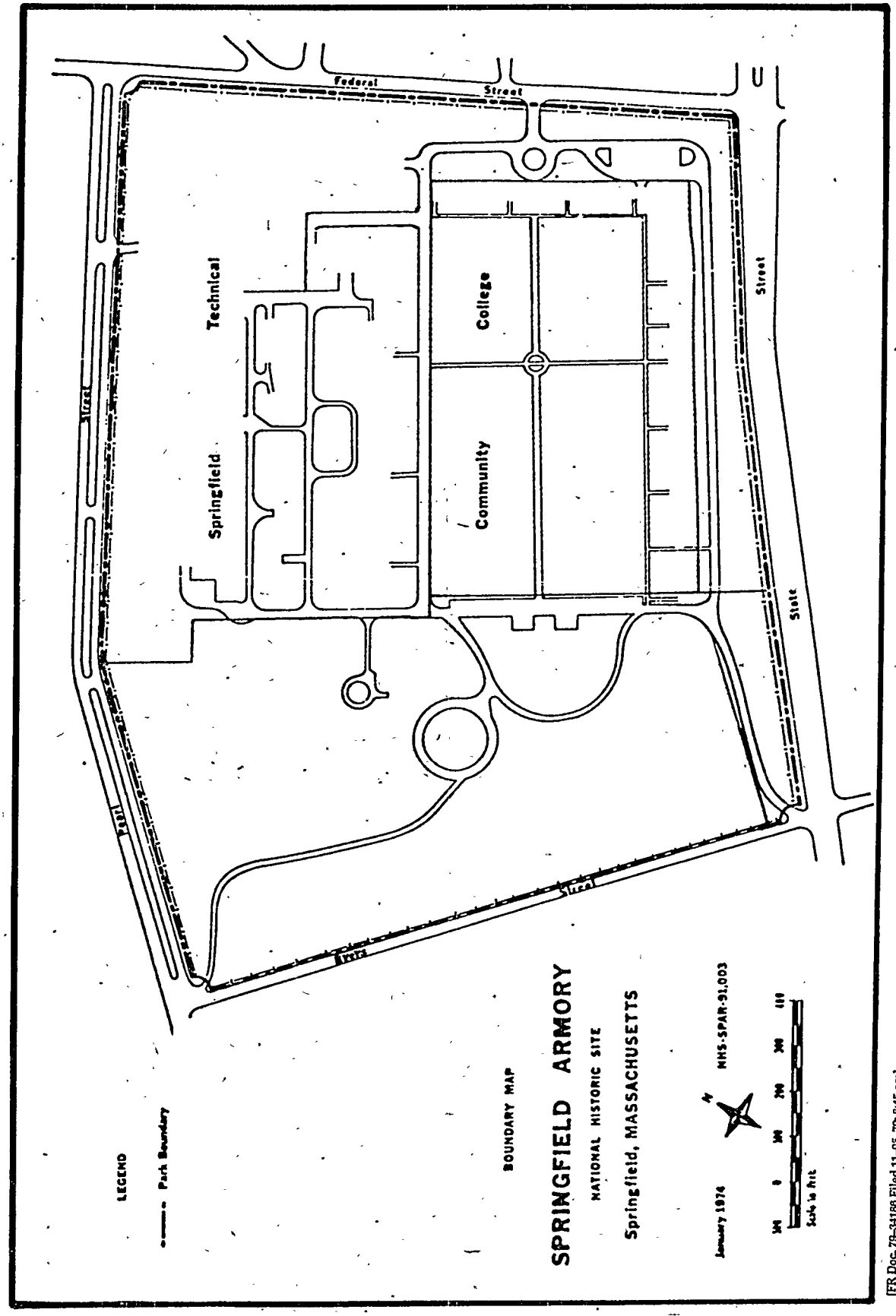
There is hereby published a boundary map which details the land incorporated into Springfield Armory National Historic Site, which is hereby established pursuant to Pub. L. 93-486. Comments on the map should be addressed to Planning and Design Section, North Atlantic Region, National Park Service, 15 State Street, Boston, Massachusetts 02109.

Dated: August 20, 1979.

Gilbert W. Calhoun,

Acting Regional Director, North Atlantic Region.

BILLING CODE 4310-70-M



[FR Doc. 79-34188 Filed 11-05-79; 8:45 am]
BILLING CODE 4310-70-C

INTER-AMERICAN FOUNDATION

Privacy Act of 1974; Systems of Records; Annual Publication

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires agencies to publish annually in the Federal Register a notice of the existence and character of their systems of records. The Inter-American Foundation last published the full text of its systems at 42 FR 47426–47428, September 20, 1977. No further changes have occurred since that publication. Therefore, the systems remain in effect as published.

Elizabeth Veatch,
Privacy Officer.

[FR Doc. 79-34298 Filed 11-5-79; 8:45 am]
BILLING CODE 7025-01-M

NATIONAL COMMISSION ON SOCIAL SECURITY

Privacy Act of 1974; System of Records

On June 26, 1979, there was published in the Federal Register Vo. 44 No. 124 page 37347 a notice of a system of records pursuant to the provisions of the Privacy Act of 1974, Public Law 93–579 (5 U.S.C. 55a). The public was given the opportunity to submit, not later than July 26, 1979, written comments concerning the proposed system of records. No comments were received.

The proposed system is hereby adopted.

Dated at Washington, D.C., on October 26, 1979.

Francis J. Crowley,
Executive Director.

NCSS–1

SYSTEM NAME:

Payroll Records—National Commission on Social Security.

SYSTEM LOCATION:

General Services Administration, Region 3 Office; copies held by the Commission. (GSA holds records for the National Commission on Social Security under contract.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and members of the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including among other documents, time and attendance cards; payment vouchers, comprehensive listing of employees; health benefits records, requests for deductions; tax forms, W–2 forms, overtime requests; leave data; requirement records. Records are used by Commission and GSA employees to maintain adequate payroll information for Commission employees and otherwise by Commission and GSA employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. "Money and Finance", generally. Also, PL 95–216.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Administrative Officer, National Commission on Social Security, 440 G Street, N.W., Washington, D.C. 20218.

The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Administrative Officer.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and microfilm.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel, including among others, GSA liaison staff and finance personnel; and Commission administrative staff.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, National Commission on Social Security, 440 G Street, N.W., Washington, D.C.

NOTIFICATION PROCEDURE:

Contact Administrative Officer or refer to Commission access regulations contained in

RECORD ACCESS PROCEDURES:

Contact Administrative Officer or refer to Commission access regulations contained in

CONTESTING RECORD PROCEDURES:

Contact Administrative Officer or refer to Commission access regulations contained in

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

NCSS–2

SYSTEM NAME:

General Financial Records—National Commission on Social Security.

SYSTEM LOCATION:

General Services Administration, Central Office; copies held by the Commission. (GSA holds records for the National Commission on Social Security under contract).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Commission and members of the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF–1038, Application and account for advance of funds; Vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of GSA and the Commission who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. "Money and Finance", generally; also, PL 95–216.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See appendix. Records also are released to GAO for audits; to the IRS

for investigation; and to private attorneys, pursuant to power of attorney.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and tape.

RETRIEVABILITY:

Manual and automated by name.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel including among others, GAS liaison staff and finance personnel; and Commission administrative staff.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, National Commission on Social Security, 440 G Street, N.W. Room 126, Washington, D.C. 20218.

NOTIFICATION PROCEDURE:

Contact Administrative Officer or refer to Commission access regulations contain in

RECORD ACCESS PROCEDURES:

Contact Administrative Officer or refer to Commission access regulations contained in

CONTESTING RECORD PROCEDURES:

Contact administrative Officer or refer to Commission access regulations contained in

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

NCSS-3

SYSTEM NAME:

General Informal Personnel Files, National Commission on Social Security.

SYSTEM LOCATION:

National Commission on Social Security.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The commission members, staff and consultants, past and present.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of personnel qualifications statements, personnel action requests and notifications, oaths of office, consultant and/or expert certifications, delegations of authority, statements of employment and financial interests, training materials and correspondence with the members of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., "Government Organization and Employees", generally. Also PL 95-216.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix.

POLICIES AND PRACTICES FOR STORING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Manual.

SAFEGUARDS:

Stored in lockable file cabinets, released only to authorized personnel, including among others, GSA liaison staff and Commission administrative staff.

RETENTION AND DISPOSAL:

Retained until no longer needed, then discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, National Commission on Social Security, 440 G Street, N.W. Room 126, Washington, D.C. 20218.

NOTIFICATION PROCEDURE:

Contact Administrative Officer or refer to Commission access regulations contained in

RECORD ACCESS PROCEDURES:

Contact Administrative Officer or refer to Commission access regulations contained in

CONTESTING RECORD PROCEDURES:

Contact Administrative Officer or refer to Commission access regulations contained in

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

Appendix.—National Commission on Social Security

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set from in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc. 79-34297 Filed 11-5-79; 8:45 am]
BILLING CODE 6820-AC-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-348]

Alabama Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. NPF-2 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit No. 1 (the facility) located in Houston County, Alabama. The amendment is effective as of the date of issuance.

The amendment modifies the Technical Specification negative flux-rate setpoint and the rate-lag circuit time constant to ensure that a reactor trip will occur for any dropped control rod.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and enviornmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 20, 1979, (2) Amendment No. 14 to License No. NPF-2, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 18th day of September, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 79-34229 Filed 11-5-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40-8748]

Cyprus Mines Corp.; Withdrawal of Intent To Prepare a Draft Environmental Impact Statement Concerning Issuance of a Byproduct Material License for the Hansen Project To Be Located in Fremont County, Colo.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Withdrawal of Intent To Prepare a Draft Environmental Impact Statement (DEIS) and Cancellation of Scoping Meeting.

SUMMARY: As noticed in 44 FR 62087, October 29, 1979, the Commission intended to prepare a draft Environmental Impact Statement on the proposed uranium mine and mill facility at the Hansen Project site for public review and comment in March 1980, and conduct a scoping meeting in Canon City, Colorado, on November 6, 1979. The intent to prepare DEIS is withdrawn and the scheduled scoping meeting is cancelled.

BACKGROUND: Legislation passed the U.S. House of Representatives on October 26, 1979, and the U.S. Senate on October 29, 1979, to amend the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. This amendment (which was approved as part of the Surface Transportation Assistance Act of 1978) provides clarification to Sections 204(h) and 204(e) of the UMTRCA of 1978. This clarification provides that the Commission shall no longer have direct licensing authority over byproduct material (i.e., uranium mill tailings) produced in Agreement States. In accordance with this legislation, the Commission will not have licensing authority to issue a Byproduct Material License for the Hansen Project, and will not be taking any major Federal action requiring compliance with Council of Environmental Quality's regulations (43 FR 55978-56007) for the procedural implementation of the National Environmental Policy Act of 1969, as amended. Accordingly, the DEIS and scoping meeting are no longer appropriate. In the event this legislation is not signed by the President, the scoping meeting will be rescheduled.

Questions regarding the withdrawal of the intent to prepare a DEIS or cancellation of the scoping meeting should be directed to M. E. Krug, U.S. Nuclear Regulatory Commission, Division of Waste Management, Mail Stop 483-SS, Washington, D.C. 20555, phone (301) 427-4103.

Dated at Silver Spring, Maryland, this 31st day of October, 1979.

For the Nuclear Regulatory Commission,

Ross A. Scarano,

Chief, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 79-34230 Filed 11-5-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-416 and 50-417]

Mississippi Power & Light Co. and Middle South Energy, Inc.; Order Extending Construction Completion Dates

Mississippi Power & Light Company and Middle South Energy, Inc. are the holders of Construction Permits Nos. CPPR-118 and CPPR-119 issued by the Atomic Energy Commission[1] on September 4, 1974 for the construction of the Grand Gulf Nuclear Station, Units 1 and 2, presently under construction at the site of Middle South Energy, Inc. in Claiborne County, Mississippi.

By letters dated April 28, 1978, August 31, 1979 and September 25, 1979, Mississippi Power & Light Company, on behalf of itself and as agent for Middle South Energy, Inc., requested an extension of the construction completion dates for the Grand Gulf Nuclear Station, Units 1 and 2. The extension was requested because construction had been delayed due, to, among other things, (1) later than expected receipt of a Limited Work Authorization (2) adverse weather conditions (3) a labor strike (4) a number of design modifications (5) lower than expected bulk commodity installation rates and (6) financial and power generation requirements.

This action involves no significant hazards consideration; good cause has been shown for the delays; and the requested extension is for a reasonable period, the basis for which are set forth

[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and Permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

in a staff evaluation of the request for extension. The preparation of an environmental impact statement for this particular action is not warranted because there will be no significant impact attributable to the Order than that which has already been predicted and described in the Commission's Final Environmental Statement for the Grand Gulf Nuclear Station, Units 1 and 2 published in August 1973. An Environmental Impact Appraisal and Negative Declaration have been prepared for this action.

For further details with respect to this action, see (1) Mississippi Power & Light Company's letters dated April 28, 1978, August 31, 1979 and September 25, 1979 requesting an extension of the construction completion dates, and (2) the staff's related evaluation, environmental impact appraisal and negative declaration all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Claiborne County Courthouse, Port Gibson, Mississippi 39150.

It is hereby ordered that the earliest and latest construction completion dates are extended for CPPR-118 from April 1, 1979 and October 1, 1979, respectively, to September 1, 1980 and March 1, 1982, respectively; and for CPPR-119 from October 1, 1980 and April 1, 1981, respectively, to April 1, 1983 and October 1, 1984, respectively.

Date of Issuance: October 30, 1979.

For the Nuclear Regulatory Commission,

Domenic B. Vassallo,

Acting Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-34232 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-416 and 50-417]

Mississippi Power & Light Co.; Negative Declaration Supporting Order for Extension of Construction Completion Dates Construction Permits Nos. CPPR-118 and CPPR-119 Grand Gulf Nuclear Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (The Commission) has reviewed the ORDER relating to construction permits CPPR-118 and CPPR-119 for Grand Gulf Nuclear Station, Units 1 and 2, located in Claiborne County, Mississippi. The construction permits are issued to the Mississippi Power & Light Company. The ORDER would authorize extension of the earliest and latest construction completion dates of Units 1 and 2 as follows:

Unit 1: From April 1, 1979 and October 1, 1979, to September 1, 1980 and March 1, 1982.

Unit 2: From October 1, 1980 and April 1, 1981, to April 1, 1983 and October 1, 1984.

In accordance with 10 CFR Part 51, the Commission's Division of Site Safety and Environmental Analysis has prepared an environmental impact appraisal (EIA) for the ORDER. The Commission has concluded that an environmental impact statement for this action is not warranted, because there will be no significant adverse environmental impacts affecting the quality of the human environment attributable to the proposed action in addition to those evaluated in the Commission's Final Environmental Statement for Grand Gulf Nuclear Station Units 1 and 2 issued in August 1973, and currently experienced at that site. No significant adverse incremental or cumulative impacts are expected to occur by extending the construction completion dates. A negative declaration is therefore appropriate.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room located in the Claiborne County Courthouse, Port Gibson, Mississippi, 39150. A copy of the EIA may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 30th day of October, 1979.

For the Nuclear Regulatory Commission,

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-34236 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

Proposed Revision to the Standard Review Plan (NUREG 75/087); Issuance and Availability

As part of the continual maintenance of the Standard Review Plan (SRP), the Nuclear Regulatory Commission has issued a Proposed Revision 1 to SRP Section 9.2.2, "Reactor Auxiliary Cooling Water Systems." A value/impact statement has been prepared in support of the proposed changes.

Public comments on this revision to the SRP and the supporting value/impact statement are solicited. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

This proposed revision, the supporting value/impact statement, and all comments that have been received by December 28, 1979 will be considered by the Regulatory Requirements Review Committee (RRRC). A summary of the RRRC meeting at which these changes are considered, the committee recommendations, and all of the associated documents and comments considered by the committee will be made publicly available prior to a decision by the Director of the Office of Nuclear Reactor Regulation on whether to implement these changes.

Copies of this proposed revision to the SRP and the supporting value/impact statement are available for public inspection at the NRC Public Document Room at 1717 H Street NW., Washington, D.C. Requests for single copies of this material or for placement on an automatic distribution list for single copies of future proposed revisions to the SRP should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control.

Dated at Rockville, Maryland this 31st day of October 1979.

For the U.S. Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 79-34233 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-301]

Wisconsin Electric Power Co.; Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Wisconsin Electric Power Company. The relief relates to the inservice inspection (testing) program for the Point Beach Unit No. 2 (the facility) located in Two Creeks, Wisconsin. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief consists of exemption from the requirements for measuring certain parameters in the Pump and Valve Testing Program and from performing certain pressure vessel weld inspections in the Inservice Inspection Testing Program.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated February 26, 1979, (2) the Commission's letter to the licensee dated October 25, 1979.

The items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the University of Wisconsin, Stevens Point Library, Stevens Point, Wisconsin 54481. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 25th Day of October, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-34231 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, SG 901-4, is entitled "Reporting of Safeguards Events" and is intended for Division 5, "Materials and Plant Protection." The Commission recently published proposed amendments to its regulations in § 73.71 of 10 CFR Part 73, "Physical Protection of Plants and Materials," that would, if adopted, require licensees to report to appropriate offices within the Nuclear Regulatory Commission events that significantly threaten or lessen the effectiveness of their safeguards systems as established by safeguards regulations or by an approved safeguards plan or by both. This guide is being developed to provide an approach acceptable to the NRC staff for determining whether an event should be reported and the format that could be used for reporting the event.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by December 31, 1979.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 29th day of October 1979.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Siting, Health and Safeguards Standards, Office of Standards Development.

[FR Doc. 79-34228 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

Hearing To Receive Testimony on Whether the March 28, 1979, Accident At the Three Mile Island Unit 2 Reactor Should Be Considered an Extraordinary Nuclear Occurrence (ENO)

On July 23, 1979, the Nuclear Regulatory Commission published in the Federal Register (44 FR 43128) a notice that pursuant to the Atomic Energy Act of 1954, as amended, the Commission was initiating the making of a determination as to whether or not the March 28, 1979 accident at the Three Mile Island Unit 2 reactor (TMI-2) constitutes an extraordinary nuclear occurrence (ENO) as defined in the Commission's regulations, 10 CFR Part 140, §§ 140.84 and 140.85. On August 17, 1979 the Commission directed that a panel composed of members of the principal staff be formed to evaluate public comments received in connection with our July 23 notice and other technical information assembled by the Commission from its own and other sources. The panel is presently reviewing the comments provided by the public in response to the July 23 notice and reviewing and updating as necessary the data and analyses provided by the numerous studies on offsite releases that it has identified as having been completed or underway.

In the interest of compiling as complete a record as possible for making the ENO determination, the Commission has decided to grant a request for a public hearing filed by Mr. David Berger on August 29, 1979. A one-day informal hearing will be held in Harrisburg, Pennsylvania to provide interested members of the public the opportunity to present oral statements to selected panel members and supporting NRC staff. The panel will be chaired by Robert Minogue, Director, Office of Standards Development. The hearing will begin at 9:00 a.m. on Wednesday, November 21, 1979 at the Rose Herman Lehrman Arts Center Auditorium of the Harrisburg Area

Community College, 3300 Cameron Street Road, Harrisburg, Pennsylvania. The statements should address either or both of the following two subjects:

(1) Whether the TMI accident meets the criteria contained in §§ 140.84 and 140.85 of Part 140 of the Commission's regulations, and

(2) Whether uncertainties in radiation measurements taken during the accident are sufficient to warrant a finding that Criteria I in § 140.84 was satisfied.

In order to allow maximum participation, in the event that there are a large number of requests to present oral statements, the panel may have to impose a five minute time limit on the length or oral statements. The panel will accept oral summaries of longer statements to be submitted in writing. Those persons wishing to present oral statements should call NRC's Antitrust and Indemnity Group collect on or before November 19, 1979 at 301–492–8337 to have their names placed on a list of intended speakers. Written statements may be submitted to the panel at the time of the hearing or they may be mailed to the Chief, Antitrust and Indemnity Group, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Both oral and written statements and the transcript of the hearing, which will be made public, will be made a part of the official record of this proceeding.

Separate Views of Commissioners Ahearne and Bradford

The issue of whether TMI meets the current ENO criteria is not much of an issue. Unless the releases are much greater than all of the estimates made by various government agencies so far, TMI will not meet the criteria. Consequently, if there is to be a public hearing, Commissioners Ahearne and Bradford would have broadened the discussion to include consideration of whether the ENO criteria should be changed in light of our experience with TMI. It is likely the public will be more interested in discussing this issue and have more to say about it than whether TMI meets the current criteria. However, the other Commissioners did not agree with this addition to the scope of the hearing.

Notwithstanding the separate views expressed above, the Commission has concluded that the subjects that should be covered in statements presented in the November 21 hearing should be addressed to the two specified in the main body of this notice.

Dated at Bethesda, Maryland this 1st day of November 1979.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

[FR Doc. 79-34392 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generation Station); Cancellation of Prehearing Conference

November 2, 1979.

Michael L. Glaser, Chairman, Dr. Richard F. Cole, Member, Frederick J. Shon, Member.

Please take notice that, due to the sudden illness of the Board Chairman, the prehearing conference scheduled in this proceeding for November 7, 1979 is cancelled until further notice.

Dated at Bethesda, Maryland, this 2nd day of November, 1979.

For The Atomic Safety And Licensing Board.

Richard F. Cole,

Member.

[FR Doc. 79-34434 Filed 11-5-79; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-493]

Alanthus Corp.; Notice of Application and Opportunity for Hearing

October 30, 1979.

Notice is hereby given that Alanthus Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order granting Applicant an exemption from the provisions of Sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. On August 14, 1978, Applicant became wholly-owned by U.T.G., Inc. and Olympus Associates. As a result of the merger, Applicant no longer has any publicly owned common stock, and there is no longer a trading market in applicant's equity securities.

2. Applicant has three issues of debentures outstanding which are traded in the over-the-counter market, and all of these issues are held by less than 300 holders. The 6% debentures have no more than 249 holders, the 10% have 126 holders, and the 9⅞% have 180 holders.

3. The Applicant is subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

In the absence of an exemption, Applicant is required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder for the fiscal year ended December 31, 1978 and for the fiscal year ending December 31, 1979. Applicant believes that its request for an order exempting it from the reporting provisions of Sections 13 and 15(d) of the the 1934 Act is appropriate because the Applicant believes that the time, effort and expense involved in the preparation of additional periodic reports will be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to the applicaton which is on file at the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 26, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time, after this date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34219 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10921; (811-1553)]

Astron Fund, Inc.; Filing of Application Pursuant to Section 8(f) of the Act for Order Declaring That Applicant has Ceased To Be an Investment Company.

October 30, 1979.

Notice is hereby given that the Astron Fund, Inc. ("Applicant") 1100 One Washington Plaza, Tacoma, Washington 98402, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, filed

an application on March 5, 1979, and an amendment thereto on August 29, 1979, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a Washington corporation and that it registered under the Act on October 26, 1967. Applicant further states that its shares were offered for sale to the public from June 13, 1968, until November 30, 1973, when it suspended further sales of its shares.

According to the application, on April 26, 1974, Applicant's shareholders, upon the recommendation of Applicant's Board of Directors, approved a Plan of Liquidation and Dissolution ("Plan"). Applicant states that on May 10, 1974, it filed a "Statement of Intent to Dissolve" with the Secretary of State of the State of Washington, and that since that date it has engaged in no business activities other than those incidental to the winding-up of its affairs. Applicant further states that those activities principally consisted of the pursuit, through a series of lawsuits, of claims against others for losses incurred in certain of Applicant's portfolio transactions.

According to the application, Applicant made three liquidating distributions to its shareholders pursuant to the Plan: (i) an initial liquidation distribution of $2.55 per share (June 1, 1974); (ii) a further liquidation distribution of $.80 per share (December 21, 1978); and (iii) a final liquidation distribution of $.0189 per share (December 28, 1978) made to approximately 2,059 shareholders of record who held the 603,908 outstanding shares of common stock as of that date. Applicant states that it has retained assets of less than $1,000 to cover miscellaneous expenses connected with its liquidation, and that as of July 31, 1979, it had on deposit $18,394, representing the amount of unclaimed liquidation checks. Applicant further states that, although liquidating distribution checks have been drawn and mailed to all of its shareholders, as of August 29, 1979, unclaimed liquidations checks for 117 shareholders whose addresses are unknown, amounted to approximately $15,710.45. Applicant represents that these assets will be held in a separate bank account for approximately six months, during which time further efforts will be made to locate shareholders, and that at the end of such period, any remaining assets will be distributed in accordance with applicable escheat laws. Applicant states that it has no other known liabilities; is not a party to any litigation or administrative proceeding; and is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than November 23, 1979, at 5:30 pm., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, and order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34215 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 6141; (18-62)]

Bell, Boyd, Lloyd, Haddad & Burns Retirement Plan; Filing of an Application Pursuant to Section 3(a)(2) of the Securities Act of 1933 for an Order Exempting From the Provisions of Section 5 of the Act Interests or Participations Issued in Connection With the Bell, Boyd, Lloyd, Haddad & Burns Retirement Plan.

October 29, 1979.

Notice is hereby given that the law firm of Bell, Boyd, Lloyd, Haddad & Burns (the "Applicant"), 135 South LaSalle Street, Chicago, Illinois 60603, an Illinois partnership, has by letter dated August 21, 1979, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any interests or participations issued in connection with its Retirement Plan and The Trust forming a part thereof (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representation contained therein, which are summarized below.

I. Introduction

The Plan covers applicant's partners and employees, of whom there were 40 and 131, respectively, as of December 31, 1978. All partners and employees are eligible to participate in the Plan after completion of three years of service and attainment of age twenty-five (25) of the completion of four years of service with the Firm, whichever is earlier.

The Plan is the type commonly referred to as a "Keogh" plan, which covers persons (in this case all of the Firm's non-owner-partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) of the Act is inapplicable to interests in the Plan.

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant states that the Plan was established in 1968 and restated in 1976 in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). The Internal Revenue Service (the "IRS") has issued a ruling to the effect that the Plan as amended and restated meets the requirements for qualification under section 401 of the Code. The Plan is an employee retirement plan subject to the fiduciary standards and to the full reporting and disclosure requirements of ERISA.

The Plan has a mandatory Firm contribution feature and a voluntary participant contribution feature, both of which are based on a percentage of compensation. Applicant states that each year it contributes annually to the Plan on behalf of each active participant an amount equal to the participant's earnings for such year multiplied by a uniform percentage determined by its executive committee (5% for 1978), plus an amount equal to 5% or the participant's earnings for the year in excess of $21,420 (in applying the formula earnings in excess of $100,000 per year are disregarded). No contribution will be made on behalf of a partner participant unless such person directs that it be made, and a partner may direct that an amount less than that determined pursuant to the formula be contributed. Amounts contributed by the Firm on a partner's behalf are charged against his partnership drawing account. Applicant may not contribute more than $7,500 per year on behalf of any partner. Applicant further states that the Plan was amended in 1976 to permit any participant to make voluntary contributions, within certain annual limits. Any voluntary contribution may be withdrawn by the participant as of the end of any calendar quarter. A voluntary account is established under the Plan for each participant who chooses to make voluntary contributions, and a regular account is established for each Plan participant to which is allocated the funds contributed by Applicant on behalf of the participant. All accounts, both regular and voluntary, are fully vested and nonforfeitable at all times.

Applicant states that the Plan is administered by a retirement committee of three partners ("Committee"), appointed by Applicant's executive committee, which is responsible for interpreting the Plan, adopting rules and regulations applicable thereto and maintaining plan records. All contributions are held by the Trustee in the Trust Fund, currently divided into the following three investment funds: (i) Stock Fund—invested in the equity account of the American Bar Retirement Association ("ABRA") master trust for self-employed retirement plans, (ii) Fixed Income Fund—invested in the fixed income account of the ABRA master trust for self-employed retirement plans (providing for an annual return through 1981 of 9%, prior to expenses, and 8¾% from 1982 through 1986, prior to expenses) under a contract between the ABRA trustees and the Equitable Life Assurance Society of the United States, and (iii) Balanced Fund—invested in the Stein Roe & Farnham Balanced Fund, Inc. Before December 21 of each year a participant's regular account shall be invested during the succeding year. Such directions are then forwarded by the Committee to the Trustee which invests in accordance with the directions. Participants may direct that all of their regular accounts be invested in one fund or that they be allocated (in multiples of 10%) among all or some of such funds. A direction once made will continue in force until changed, and until a direction is made all funds allocated to a participant's regular account are invested entirely in the Balanced Fund. At December 31, 1978 approximately 67% of the amounts allocated to the regular accounts were invested in the Fixed Income Fund, and voluntary accounts must, under the terms of the Plan, be invested entirely in such Fund.

Under the Trust Agreement, the Trustees have the exclusive responsibility and authority to hold, invest, reinvest and administer the trust assets, subject to the restrictions contained therein.

Applicant contends that were it a corporation rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also maintains that were the Firm's partners not permitted to participate in the Plan, the interests or participations issued in connection with the Plan, would be exempt under Section 3(a)(2) since no other persons covered by the Plan would be "employees" within the meaning of Section 401(c)(1) of the Code. Applicant argues that there is no valid basis for a contrary result merely because the Plan also covers partners in the Firm.

Applicant also states that it is engaged in furnishing legal services which involve financially sophisticated and complex matters, exercises extensive administrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its partners and employees without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to the participants.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessariuly should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption.

for all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 23, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by

certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following November 23, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34218 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10914; (812-4229)]

Dreyfus Money Market Instruments, Inc; Filing of Application for Amended Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

October 26, 1979.

Notice is hereby given that Dreyfus Money Market Instruments, Inc., ("Applicant") 767 Fifth Avenue, New York, New York 10022, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an amended application on February 28, 1979, and amendments thereto on April 20, 1979, August 20, 1979, and September 6, 1979, requesting an order, pursuant to Section 6(c) of the Act, amending a prior order of the Commission (Investment Company Act Release No. 10451, October 26, 1978) ("Prior Order") to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to maintain a price per share of $1.00 by means of the amortized cost valuation method. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund and that it is designed as an investment vehicle for investors with temporary cash balances or cash reserves. Applicant further states that it is designed to provide current income consistent with stability of principal and that its portfolio may be invested in a variety of money market instruments. According to the application, Applicant has invested primarily in certificates of deposit of banks which are among the 100 largest commercial banks in the United States. In addition, Applicant states that, as a matter of fundamental investment policy, all of its investments must consist of obligations maturing within one year from the date of purchase.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotation are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act required that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that it currently values its portfolio at market. Pursuant to the Prior Order, Applicant maintains a per share price of 1.00 by "rounding off" the calculation of its net asset value per share to the nearest cent on a per share price of $1.00. Applicant states that, through discussions with institutional investors, it has learned that two qualities are desirable in order to attract investments from institutional investors: (1) stability of principal and (2) steady flow of investment income. Applicant asserts that by purchasing high quality money market instruments of relatively short maturities, combined with its $1.00 price per share for purposes of sales and redemptions, it has been possible for Applicant to provide these features to institutional investors. However, Applicant states that its experience indicates that an average portfolio maturity of approximately 120 days, combined with a per share price of $1.00 maintained by use of the amortized cost valuation method, would enable it to provide institutional investors with the features they desire, while at the same time: (1) reducing significantly the possibility of a change in price per share, and (2) providing a yield on portfolio instruments commensurate with yields available in the money market generally. Applicant submits that such a yield could not be achieved with a shorter average portfolio maturity.

Applicant states that its board of directors has determined in good faith that: (1) utilizing the amortized cost method of valuation would be appropriate, and (2) that absent unusual circumstances, amortized cost valuation represents the fair value of Applicant's portfolio investments. Accordingly, Applicant requests that the Prior Order be amended to exempt it from Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to maintain its $1.00 price per share by means of the use of amortized cost valuation.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally of unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant agrees to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably

designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included with the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The document preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service, or in the case of any instrument that is not so rated, of comparable quality as determined by the Board of Directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to conditioned 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than November 20, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34216 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicant states that to fulfill this condition it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value. Applicant further states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[File No. 81-577]

Expediter Systems, Inc.; Application and Opportunity for Hearing

October 30, 1979.

Notice is hereby given that Expediter Systems, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under Section 15(d) of the 1934 Act.

The Application states:

At May 31, 1979, as a result of stock purchases by Old Dominion Freight Line, the Applicant had 86 shareholders.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person no later than November 26, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washngton, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34211 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-587]

First Liberty Corp.; Application and Opportunity for Hearing

October 30, 1979.

Notice is hereby given that First Liberty Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order granting Applicant an exemption from the quarterly reporting requirements of Sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. On January 12, 1978, the United States District Court, Middle District of Florida, Tampa Division entered a final judgment ordering the liquidation of the Applicant and its wholly-owned subsidiary.

2. The Applicant is not and has never been engaged in the insurance business.

3. The assets available for distribution consist of cash and are invested in a savings account and certificates of deposit with the expenses of administration being paid out of the interest earned on those investments.

4. The preparation of quarterly reports would serve no useful purpose as the Applicant is required: (1) to file monthly reports with the Federal District Court; and (2) would remain subject to all other reporting requirements of Sections 13 and 15(d) of the 1934 Act.

5. All shareholders have received a copy of the proposed Plan of Distribution, and will receive notice of the order approving the Plan of Distribution, and requirements for participation in the Distribution Process.

In the absence of an exemption, Applicant is required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder. Applicant believes that its request for an order exempting it from the quarterly reporting requirements is appropriate because the time, effort and expense involved in the preparation of quarterly reports will be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C.

Notice is further given that any interested person not later than November 26, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time, after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34212 Filed 11-05-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10910; (812-4403)]

Investors Mutual, Inc., et al.; Filing of an Application for an Order Amending a Previous Order Granting Exemption From the Provisions of Section 22(d) and Rule 22d-1 Thereunder Pursuant to Section 6(c) of the Act and Permitting Offers of Exchange Pursuant to Section 11(a) of the Act

October 23, 1979.

Notice of hereby given that Investors Mutual, Inc. ("Mutual"), Investors Stock Fund, Inc. ("Stock"), Investors Selective Fund, Inc. ("Selective"), Investors Variable Payment Fund, Inc. ("Variable"), IDS New Dimensions Fund, Inc. ("New Dimensions"), IDS Progressive Fund, Inc. ("Progressive"), IDS Bond Fund, Inc. ("Bond"), IDS Cash Management Fund, Inc. ("Cash Management"), IDS Tax-Exempt Bond Fund, Inc. ("Tax-Exempt"), and IDS High Yield Tax-Exempt Fund, Inc. ("High Yield") (collectively referred to as "the Funds") (1000 Roanoke Building, Minneapolis, Minnesota 55402, open-end management investment companies registered under the Investment Company Act of 1940 ("Act"), and Investors Diversified Services, Inc. ("IDS") IDS Tower, Minneapolis, Minnesota 55402 each Fund's investment adviser and principal underwriter (collectively referred to with the Funds as "Applicants"), filed an application on August 23, 1979, and an amendment thereto on September 28, 1979, requesting an order of the Commission amending in the manner described below and earlier order of the Commission dated June 20, 1979 (Investment Company Act Release No. 10742). This earlier order, pursuant to Section 11(a) of the Act, permitted certain transfers among the Funds and IDS Growth Fund, Inc. ("Growth") (the Funds and Growth hereinafter collectively referred to as "the Investors Group of Funds"), on a basis other than their net asset value per share at the time of transfer and, pursuant to Section 6(c) of the Act, exempted such transfers from the provisions to Section 22(d) of the Act and Rule 22d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

IDS, as principal underwriter for the Funds, maintains a continuous public offering of shares of each of the Funds at their respective net asset value plus a sales charge. On purchases of less than $15,000, the sales charge is 3½% for Bond, 7% for Selective, 8% for Mutual, Stock, Variable, New Dimensions, Progressive and Growth. Tax-Exempt and High Yield have a 4% sales charge on purchases of less than $50,000. For each of the Investors Group of Funds, the sales charge is reduced on larger purchases, except Bond which has a level 3½% sales charge. There is no sales charge for purchases of Cash Management. All of the Investors Group of Funds, except Bond, permit reinvestment of dividends and capital gains distributions without payment of a sales charge.

Applicants represent that pursuant to the earlier order of the Commission dated June 20, 1979, the shareholders of Mutual, Stock, Variable, Progressive, New Dimensions and Growth currently have the privilege of transferring their shares into shares of each of the Investors Group of Funds, except Bond and Growth, at net asset value without paying a sales charge. Applicants further state that the shareholders of Selective, Bond, Tax-Exempt and High Yield who have held their investments for eight months or more have the same transfer privilege described above, except that shareholders of High Yield, Selective and Tax-Exempt may transfer their shares at net asset value into Tax-Exempt or High Yield at any time. The shareholders of each of the Investors Group of Funds, except Cash Management, who have held their shares eight months or more may

transfer into Bond at net asset value without paying a sales charge.

Applicants further represent that the shareholders of each of the Investors Group of Funds, except Cash Management, who have held their investments for less than eight months may transfer into Bond upon paying an additional sales charge. Shareholders of Bond, Tax Exempt and High Yield who have held their shares for less than eight months have the privilege of transferring into Mutual, Stock, Variable, Progressive, New Dimensions, Tax-Exempt, Selective and High Yield upon paying an additional sales charge. Applicants further state that shareholders of Selective who have held their shares for less than eight months may transfer into Mutual, Stock, Variable, Progressive and new Dimensions upon paying an additional sales charge. In each instance the additional sales charge is equal to the difference between the sales charge actually paid and that which would have been imposed had the original investment been in the Fund into which the subsequent transfer was made. No transfers are permitted into Cash Management by shareholders of Selective, Bond, Tax Exempt and High Yield who have held their shares less than eight months. Shareholders of the Investors Group of Funds do not have the privilege of transferring into Growth.

Shareholders of Cash Management who acquire their shares with redemption proceeds from one of the other Investors Group of Funds may transfer their shares into shares of each of the Investors Group of Funds, except Growth, at net asset value without paying a sales charge. Shares of Cash Management that were purchased directly may be redeemed and the redemption proceeds invested in shares of each of the Investors Groups of Funds by paying the applicable sales charge. Shares of Cash Management that were acquired with the redemption proceeds from one of the other Investors Group of Funds will be transferred first.

Applicants now propose to assess an additional sales charge on transfers into Bond by certain shareholders of Cash Management. In this regard, Applicants state that the purpose of the proposed transfer privileges and the eight month restriction, where applicable, is to discourage attempts to circumvent the higher sales charges that could occur were an investor to purchase any of the Investors Group of Funds with a lower sales charge and, subsequently, transfer the investment at net asset value for an investment in one of the other Investors Group of Funds which imposes a higher sales charge than the Fund originally pruchased. According to the application, however, payment of the additional sales load could possibly be avoided with respect to transfers into Bond by shareholders of Cash Management who acquired such shares with redemption proceeds from another of the Investors of Group of Funds and the combined investment period has been less than eight months. In order to insure that all the methods of purchasing shares of the Investors Group of Funds are equal, Applicants request an order of the Commission amending the previous order to permit Bond to assess an additional charge on shareholders of Cash Management who acquired such shares: (1) with proceeds redeemed from one of the other Investors Group of Funds where the sales charge assessed by the other Fund is less than the charge that would have been assessed had the investment been in Bond orginally; and (2) with proceeds redeemed from one of the other Investors Group of Funds where the time span invested in Cash Management plus the time span of any prior investment in such Fund in less than eight months.

Applicants represents that in all instances, the additional sales charge assessed by Bond on these transfers will be equal to the difference between the sales charge actually paid and the charge that would have been paid had the investment been made in Bond originally.

Applicants further represent that pursuant to the distribution agreements between IDS and each of the Investors Group of Funds, except Cash Management, IDS receives a sales charge equal to the difference between the total amount received upon each sale of shares and the net asset value of such shares at the time of sale, a portion of which is paid to IDS sales representatives as commissions. With respect to those transfers described above which involve the payment of any additional sales charge, Applicants state that IDS will pay to the applicable sales representative that portion of the additional sales charge which he would have received if the sale of shares of the higher load Fund had been made initially. Applicants further note that Bond imposes a sales charge for reinvested dividends by shareholders of Bond, which could result in the payment of an additional commission to the IDS sales representative who helped with the transfer. Applicants assert, however, that since the dividend reinvestment is a new sale which, technically, is not included in the original transfer, and that in many cases the customer calls the IDS sales representative to help with such dividend reinvestment, it is appropriate to reimburse such sale representative for his effort. Applicants further state that they believe that there is not sufficient financial incentive for an IDS sales representative to initiate such transfers for his own benefit. Applicants represent that IDS has established sufficient internal monitoring and review procedures to ensure that such transfers are made at the request of the customer and not for the IDS sales representative's personal gain (including monitoring the frequency of transfers handled by individual representatives.)

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make, or cause to be made, an offer to the shareholder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset value of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current public offering price described in the prospectus. The sales charge described in the prospectus of each of the Investors Group of Funds is normally greater than the sales charge which would be applicable to a proposed transfer. Rule 22d-1 permits certain variations in sales load, none of which it is alleged are applicable to the proposed transfer privileges.

Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

On the basis of the foregoing, Applicants submit that the proposed exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Notice is further given that any interested person may, not later than November 15, 1979, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34214 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-588]

Thomson Industries Limited; Application and Opportunity for Hearing

October 30, 1979.

Notice is hereby given that Thomson Industries Limited ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant states in part:

1. The Applicant was a publicly held company with a class of securities registered pursuant to Section 12(b) of the 1934 Act and was thus subject to the reporting provisions of Section 13 of the 1934 Act.

2. As a result of a tender offer first made on March 3, 1978, Atco Industries Holdings Ltd., acquired in excess of 90% of the Applicant's outstanding shares of common stock. The Applicant certified that as of June 25, 1979, there were only approximately 49 holders of its common stock outstanding.

3. After termination of its Section 12(b) registration, Applicant is subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act for the remainder of its fiscal year ended March 31, 1979.

The Applicant contends that no useful purpose would be served in filing the required reports in view of the undertaking of Atco Industries Holdings Ltd. to furnish consolidated financial statements for the year ended March 31, 1979, and for subsequent fiscal quarters to the remaining shareholders of Applicant and further that a trading market no longer exists in the Applicant's securities.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 26, 1979 may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34217 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-594

Venice Industries Inc.; Application and Opportunity for Hearing

October 30, 1979.

Notice is hereby given that Venice Industries Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order granting Applicant an exemption from the provisions of Sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. On March 16, 1979 the Applicant and Jonathan Logan, Inc. ("Logan") executed an Agreement and Plan of Merger pursuant to which the Applicant would become a wholly-owned subsidiary of Logan and the Applicant's stockholders would be paid $3.50 in cash for each share of the Applicant's common stock.

2. At a special meeting of stockholders held on May 31, 1979 the stockholders of the Applicant met and approved the Agreement and Plan of Merger.

3. Immediately following the special meeting, a Certificate of Merger was filed with the Secretary of State of Delaware and the merger became effective.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C.

Notice is further given that any interested persons not later than November 26, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time, after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34213 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10925; 812-4526]

American General Insurance Co. and American General Exchange Fund (a California Limited Partnership); Filing of an Application Pursuant to Section 17(b) of the Act for an Order Exempting a Proposed Transaction From the Provisions of Section 17(a) of the Act

October 31, 1979.

Notice is hereby given that American General Insurance Company ("American General") and American General Exchange Fund (A California Limited Partnership) (the "Fund"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act") (hereinafter the Fund and American General are collectively referred to as the "Applicants") 2727 Allen Parkway, Houston, Texas 77019, filed an application on August 27, 1979, and an amendment thereto on October 18, 1979, pursuant to Section 17(b) of the Act for an order of the Commission exempting from the provisions of Section 17(a) of the Act a proposed sale of 5,000 shares of the common stock of Lincoln National Corporation ("Lincoln") by the Fund to American General. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

American General, a Texas Corporation, is primarily engaged through subsidiaries in life, health, property and casualty insurance and other financial services activities. American General and those of its subsidiaries for which American General makes investment decisions (the "AG Group") beneficially owned, as of July 13, 1979, 2,011,600 shares of the common stock of Lincoln or 9.21% of the outstanding voting securities of Lincoln. On the same date, the Fund, whose principal investment objective is long-term growth of capital, with the production of current income as a secondary objective, beneficially owned 5,000 shares of the common stock of Lincoln.

On July 13, 1979, American General and Lincoln executed an agreement (the "Agreement") for the purchase by Lincoln of all the shares of Lincoln common stock held by the AG Group at $52.00 per share, to be paid by 9¾% subordinated notes due 1994, issued by Lincoln. The Agreement was consummated on September 28, 1979. The Applicants represent that other than through the power to vote the shares of Lincoln held by the AG Group, American General did not exercise any control or influence over the management of Lincoln and did not influence any of the investment activities of Lincoln. As part of the Agreement, American General agreed that as long as the subordinated notes of Lincoln are outstanding, American General and its "affiliates" (defined in the Agreement to exclude any investment company advised by a subsidiary of American General) will not become the beneficial owners of more than 1% of any class or series of any class of voting securities of Lincoln. The Applicants represent that the Agreement does not affect in any way the ability of any investment company advised by a subsidiary of American General to acquire or to dispose of any stock of Lincoln. The Agreement also gave American General the option, which it did not exercise, to require that Lincoln purchase for cash $25,000,000 in principal amount of 9¾% subordinated notes due 1994 of American General.

As stated above, on July 13, 1979, the Fund beneficially owned 5,000 shares of the common stock of Lincoln which were acquired in the initial offering of the Fund upon the exchange by Fund limited partners of such shares for shares of the Fund. The cost of the Lincoln stock to the Fund was $181,875, or $36.38 per share. The investment adviser to the Fund, American General Capital Management, Inc. ("AGCM"), is a wholly-owned subsidiary of American General. Applicants state that all investment decisions made by AGCM for the Fund are made independently of the investment decisions made by American General for the AG Group, and that AGCM and American General have implemented certain procedures to ensure such continued independence.

American General has offered to purchase from the Fund its holdings of Lincoln stock at $52.00 per share, the same price at which Lincoln purchased the Lincoln shares held by the AG Group in accordance with the Agreement. The purchase price of $52.00 per share, however, would be paid in cash rather than in 9¾% subordinated notes of Lincoln. The Agreement provides for the sale by American General to Lincoln of all or a portion of the Lincoln shares currently owned by the Fund at $52.00 per share, assumming that the Fund sells any such shares to American General. Lincoln's obligation to purchase the Fund's Lincoln shares from American General expires 90 days after consummation of the Agreement.

Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company knowingly to sell to or to purchase from such registered company any security or other property subject to certain exceptions not relevant here. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company involved and with the general purposes of the Act. Under Section 2(a)(3) of the Act an investment adviser to an investment company is an affiliated person of such investment company, and anyone owning more than 5% of the adviser's outstanding voting securities is an affiliated person of the adviser. Accordingly, since American General owns 100% of the common stock of AGCM, investment adviser to the Fund, American General is an affiliated person of an affiliated person of the Fund, and the proposed sale of Lincoln stock by the Fund to American General falls within the provisions of Section 17(a) of the Act.

Applicants assert that the terms of the proposed transaction are fair and reasonable and do not involve overreaching. Applicants state that the $52.00 price per share of Lincoln stock to be paid by American General to the Fund compares favorably with the market value of Lincoln stock on October 12, 1979, of $41.25 per share, which would result in a profit of $78,125 to the Fund. Furthermore, Applicants represent that the $52 price was arrived at through arm's-length negotiations between Lincoln and American General. In this connection, Applicants represent that neither the Fund nor AGCM participated in the negotiation of the sale by American General to Lincoln, and that the Agreement would have been consummated in its present form even if there were no provision for the sale of the Fund's holdings of Lincoln stock. Applicants contend that the price to the Fund is fair, not only because it is the same price to be paid to the AG Group for its shares, but because, unlike the AG Group, the Fund is not obligated to sell any of its Lincoln stock. Depending upon AGCM's and the Fund's Managing Partners' independent analysis of the profits to be realized from the proposed sale versus future opportunities to sell the Fund's Lincoln stock at higher prices, Applicants state that all or a portion of the Fund's

holdings may or may not be tendered in response to the offer, and the proposed sale may or may not occur. Applicants specifically state that the Fund's Managing General Partners have created a committee of Managing General Partners who are unaffiliated with AGCM to consult with the Fund's portfolio manager in determining whether to sell any or all of the Fund's holdings of Lincoln stock in response to American General's offer. In recommending any such sale, AGCM will confer with the members of this committee, who will review the recommendation from the standpoint of (1) the sale price to American General versus the then prevailing price for the stock in the market place; (2) the tax impact of the sale on the Fund's limited partners; and (3) the potential return on any use of the proceeds from the sale versus the return on a continued holding of the stock. In the absence of the approval by this committee of any sales recommendation, the proposed sale will not be effected.

Applicants also contend that the proposed sale is consistent with the Fund's investment policy. Unlike American General, which received Lincoln subordinated notes in the sale of its Lincoln stock, the Fund will receive cash. Applicants state that the Lincoln subordinated notes are an inappropriate investment for the Fund because they are restricted as to resale and thus contrary to the fundamental investment policy of the Fund of not making loans evidenced by debt securities of limited marketability.

Applicants also assert that the proposed transaction is consistent with the general purposes of the Act. The Applicants state that under the terms of the proposed sale the Fund will be able to enjoy the same price as American General on the sale of its shares of Lincoln stock without being subject to the same burdens. As stated earlier, American General was required to take back restricted Lincoln notes for its Lincoln stock, while the Fund is able to sell its Lincoln stock in a cash transaction.

Thus, Applicants contend that the terms of the proposed sale are fair and reasonable and do not involve overreaching on the part of any person concerned, consistent with the Fund's investment policy and consistent with the general purposes of the Act, and therefore request that the Commission enter an Order exempting the proposed sale from the provisions of Section 17(a) of the Act.

Notice is further given that any interested person may, not later than November 26, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request.

As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34288 Filed 11-5-79; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 10924; 812-4537]

Fund of America, Inc. and American General Total Return Fund, Inc.; Filing of an Application Pursuant to Section 17(b) of the Act for an Order Exempting Proposed Transaction From the Provisions of Section 17(a) of the Act.

October 31, 1979.

Notice is hereby given that Fund of America, Inc. ("FOA") and American General Total Return Fund, Inc. ("Total Return") (hereinafter collectively referred to as "Applicants") 2777 Allen Parkway, Houston, Texas 77019, both registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, filed an application on September 18, 1979, and an amendment thereto on October 22, 1979, pursuant to Section 17(b) of the Act for an order of the Commission exempting from the provisions of Section 17(a) of the Act the proposed combination of Total Return with and into FOA. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the proposed combination is part of an overall plan of consolidation of certain of the mutual funds managed by American General Capital Management, Inc. ("Management"), the investment adviser of each of the Applicants and a wholly-owned subsidiary of American General Insurance Company. Such overall plan was undertaken by the independent directors of the Applicants and the other mutual funds managed by Management to effect operating economies, which are expected to benefit Applicants' stockholders.

Applicants state that, as of June 30, 1979, the net assets of FOA and Total Return were $44,397,131 and $32,187,049, respectively. On that date FOA had 5,795,726 shares outstanding and Total Return had 4,212,397 shares outstanding. FOA is a New York corporation and Total Return is a Maryland corporation. Applicants represent that since the same investment adviser, principal underwriter and stock transfer agent serve each Applicant, and since the Applicants have certain overlapping directors, the Applicants may be deemed to be under "common control" and, therefore, "affiliated persons" of each other within the meaning of Section 2(a)(3)(C) of the Act.

Applicants state that they have entered into an Agreement and Plan of Reorganization (the "Plan") dated September 7, 1979, which provides for (i) the combination of the Applicants to be accomplished through the transfer of Total Return's assets to FOA in exchange for shares of FOA; (ii) the distribution on a pro rata basis to stockholders of Total Return of all shares of FOA received by Total Return; and (iii) the dissolution of Total Return after such distribution. This transaction is referred to as the "Combination". The number of FOA shares to be issued to the stockholders of Total Return will be determined by dividing the aggregate net asset value of Total Return by the per share net asset value of FOA, all to be determined as of the close of the New York Stock Exchange on the closing date of the proposed Combination, which is expected to be November 30, 1979. If the proposed Combination had taken place on June 30, 1979, FOA would have issued 4,152,000 FOA shares valued at $31,285,373 in exchange for the assets of Total Return. The valuation procedures to be used in determining the net assets of each Applicant are the same. On the effective date of the proposed

Combination all of the property and assets of Total Return, except for approximately $10,000 which will be retained by Total Return to provide for the payment of accrued but unpaid Plan expenses, will be transferred to FOA. Each Applicant will pay its respective expenses of the proposed Combination, which are estimated to be approximately $25,000 for FOA and $85,000 for Total Return. FOA will assume all liabilities of Total Return except expenses associated with the proposed Combination.

No tax adjustment will be made to the net assets of either Applicant to reflect any potential income tax effect which might result from any differences in the proportionate amount of capital loss carryforwards of each Applicant because of the difficulty in predicting the potential use by FOA or Total Return of such loss carryforwards. Since the stockholders of Total Return are expected after consummation of the proposed Combination to own more than 20% of the outstanding shares of FOA, the entire amount of capital loss carryforward of Total Return at the closing date of the proposed Combination should be available to FOA.

The number of shares of FOA received by each stockholder of Total Return will promptly after the effective date of the proposed Combination be registered on the books of FOA without any action being required on the part of any stockholder. Each such stockholder will be advised of the number of shares so registered. Holders of certificates for shares of Total Return will immediately become owners of the appropriate number of shares of FOA, but no certificates will be issued until any outstanding Total Return certificate is tendered to the transfer agent. If the registration with respect to any shares is to be changed, the stockholder will be responsible for any transfer taxes incurred, and must provide a signature guarantee on the instrument of transfer. All dividends and distributions paid on shares of the combined fund will be paid to the stockholder in cash or reinvested in shares of the combined fund in accordance with any option previously in effect, unless the stockholder furnishes different instructions to the transfer agent in writing.

Applicants state that the proposed Combination is contingent upon: (1) approval by the holders of at least 50 percent of the outstanding stock of Total Return; (2) receipt of opinions of counsel that the proposed Combination will constitute a tax-free reorganization; (3) issuance of the Order requested by the Application referred to herein; and (4) receipt of opinions of counsel respecting certain legal matters in connection with the proposed Combination. At any time prior to consummation of the proposed Combination the Board of Directors or President of either Applicant may waive any of the terms or conditions of the Plan benefiting such Applicant, if in the opinion of the Board of Directors or President such waiver will not have a material adverse effect on the benefits intended under the Plan to accrue to the stockholders of each Applicant.

Applicants state that FOA's investment objective is appreciation of capital with emphasis on protection of capital values, and that consistent with FOA's emphasis on protection of capital values, investments in income-producing securities are considered appropriate. Total Return's investment objective is to seek to maximize total return to stockholders from both current income and long-term growth of capital and income, to the extent consistent with protection of invested capital. The relative proportion of the various types of securities in each fund's portfolio is substantially similar, and approximately 80% of the value of the securities in the pro forma combined portfolio as of June 30, 1979, consisted of securities held by both Applicants. In the opinion of Management the investment objectives of the Applicants are compatible.

Applicants also state, that, although there are some variations in the investment restrictions applicable to FOA and Total Return none of such variations is considered by Management to be of material significance in the management of Applicants' portfolios. If the proposed Combination is consummated, the investment restrictions and policies of FOA will become the investment restrictions and policies of the combined fund. In addition, the application states that, in the opinion of Management, the pro forma composition of the combined fund's portfolio is compatible with FOA's investment objective, investment policies and investment restrictions. Therefore, no sales of securities in the portfolio of Total Return will be required to conform to FOA's investment objective, policies and restrictions.

Applicants state that FOA is a nominal defendant in two shareholders' derivative actions. The first, *Halbfinger* v. *Bleakney*, originally commenced in 1971, alleges that the profit on a sale by a former FOA investment adviser and principal underwriter of its assets to Equity Funding Corporation of America belongs to FOA. On September 10, 1979, the principal parties to this action entered into a stipulation of Settlement providing that $125,000 should be paid into a settlement fund. After deduction of legal fees (not to exceed $40,000) and legal expenses the remainder will be paid to FOA, if the settlement becomes final. A court hearing on the approval of this settlement was held on October 15, 1979, and the court on October 18, 1979, entered an order approving the settlement. The settlement proceeds, which FOA expects to approximate $80,000, will be recorded as an asset by FOA on November 19, 1979, unless a notice of appeal is filed before that date. The second case, *Lavinia* v. *Funnell*, originally commenced in 1969, has been on deferred status since 1973. The shareholder plaintiffs allege various violations of provisions of the federal securities laws in the management of FOA by its former investment adviser, former distributor, and certain of its former directors and officers.

If the proposed Combination is consummated, any amounts which would otherwise accrue to FOA after the effective date as a result of the above litigation will be paid to the merged fund. Thus, the proposed Combination will have the effect of diluting the benefit received by FOA stockholders from any litigation payments made following consummation of the proposed Combination.

All legal fees incurred after the proposed Combination will be borne by all stockholders of the merged fund. If the proposed Combination is not consummated, any recovery and all future legal expenses will accrue to and be borne by the FOA stockholders.

The application states that the Board of Directors of FOA specifically considered the above litigation and the dilution which would result from the proposed Combination in FOA's interest in any recovery realized after consummation of the Combination. The Board, after weighing the potential benefits of the proposed Combination and taking into account many factors, concluded that the proposed Combination was in the best interests of stockholders of FOA.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal knowingly to sell to or purchase from such investment company any security or other property, subject to certain exceptions. Section 17(b) of the Act provides that the Commission may upon application, exempt a proposed transaction from the provisions of Section 17(a) of the Act if

the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act.

Applicants state that since the proposed Combination may be deemed to involve the purchase and sale of securities and other property between affiliated registered investment companies, unless exempted, it may be deemed to violate Section 17(a) of the Act. Applicants represent that the terms of the proposed Combination are reasonable and fair and do not involve overreaching on the part of any person concerned since the assets of Total Return are being acquired by FOA in exchange for shares of FOA on the basis of their respective net asset values.

Applicants assert that consummation of the proposed Combination is expected to benefit their stockholders through an overall reduction in operating expenses over the long run. This reduction is expected to result primarily from the elimination of certain operating expenses, such as accounting services, legal and audit fees, directors' fees and costs of reports to stockholders, which would be duplicative in absence of the proposed Combination. For 1978, it is estimated that the pro forma savings would have totalled approximately $50,000.

Finally, Applicants state that the distributor of shares of Total Return and FOA believes that the proposed Combination could result in improved marketability of the shares of the combined fund as compared to individual experience of the separate funds.

Notice is further given that any interested person may, not later than November 26, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34289 Filed 11-5-79; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 6142; 16-63]

Squire, Sanders & Dempsey Retirement Plan for Partners; Filing of an Application Pursuant to Section 3(a)(2) of the Securities Act of 1933 for an Order Exempting from the Provisions of Section 5 of the Act Interests or Participations Issued in Connection With the Squire, Sanders & Dempsey Retirement Plan for Partners

October 31, 1979.

Notice is hereby given that the law firm of Squire, Sanders & Dempsey (the "Applicant") 1800 Union Commerce Building, Cleveland, Ohio 44115, an Ohio partnership, has by letter dated September 13, 1979, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with its Retirement Plan for Partners and the Trust Agreement forming a part thereof (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

The Plan covers all of applicant's partners of whom there were 95 so covered as of July 1, 1979. All partners are eligible to participate in the Plan if they have attained age 25, have completed three years of service with the Firm and have not filed a written waiver of participation.

The Plan is of a type commonly referred to as a "Keogh" plan, which covers persons (in this case all of Applicant's non-owner employees) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) of the Act is inapplicable to interests in the Plan, absent an order of the Commission issued under Section 3(a)(2).

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant states that the Plan which was originally adopted in 1966 was amended and restated effective as of October 1, 1977 to cover only partners of the Firm. The Internal Revenue Service (the "IRS") has issued a ruling to the effect that the Plan as amended is a qualified Plan under Section 401 of the Code. The Plan is a Retirement Plan for Partners subject to the fiduciary standards and to the full reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA").

The Plan has a mandatory Firm contribution feature and a voluntary partner-participant contribution feature, both of which are based on a percentage of compensation. In general, the Plan provides that contributions be made annually by the Applicant for each partner in the Plan in an amount equal to 7½% of such partner's compensation, up to a maximum of $7,500. In addition, each partner-participant may elect to make voluntary contributions in an amount not in excess of 10% of the partner's aggregate compensation for all plan years during which he was a participant, subject to certain limitations.

Applicant states that the Plan is administered by a Pension Committee, consisting of three partners of the Firm elected by the Firm, through a single trust with Citibank N.A. serving as Trustee. Each partner may choose annually to have all or a part of his account invested in an equity fund, a fixed income fund or in such other accounts or funds as may be established by the Pension Committee in its discretion. The Equity Fund consists of

common stocks and other investments which do not bear a fixed return, including United States Government Agency and Corporate Securities, Certificates of Deposit, Revolving Collective Demand Notes, Bankers Acceptances, Repurchase Agreements and Commercial Paper, all having respective maturities at the date of purchase of not more than one year from that date. The Fixed Income Fund consists of bonds and other investments, which bear a fixed rate of return; however, the Trustee may, if directed by the Pension Committee, invest the Fixed Income Fund in an Insurance Company Fixed Income Contract, or the equivalent designated by the Pension Committee.

Contributions made by Applicant on behalf of participants are held in trust and invested in accordance with the provisions of the Plan. The Plan provides for transfers from the Retirement Plan for Empoyees when an associate becomes a partner. In addition, the Plan permits the Funds to be managed by an investment manager, who may be appointed, removed and replaced by the Firm from time to time. The Firm has recently appointed Cooke & Bieler, Inc. as investment manager for the Plan. Under the Trust Agreement, the Trustee has the responsibility and authority to hold, invest, reinvest and administer the trust assets not otherwise committed to the management of the investment manager, in accordance with the Plan and such instructions as may be gven to it by the investment manager.

Applicant contends that were it a corporation rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also maintains that were the Firm's partners not permitted to participate in the Plan, the interests or participations issued in connection with the Plan would be exempt under Section 3(a)(2) since no other persons covered by the Plan would be "employees" within the meaning of Section 401(c)(1) of the Code, Applicant argues that there is no vaild basis for a contrary result merely because the Plan covers partners who are non-owner employees.

Applicant also states that it is engaged in furnishing legal services which involve financially sophisticated and complex matters, exercises extensive administrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its partners without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to the participating partners.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 26, 1979, at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemproraneously with the request. An order disposing of the matter will be issued as of course following November 26, 1979 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-34290 Filed 11-5-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 15-A; Revision 1, Amdt. 2]

Administrative and Financial Activities; Redelegation

Delegation of Authority No. 15-A,Rev. 1 (42 FR 63840), as amended (43 FR 17435) is hereby further amended to delegate authority to the Chief, Supply Section to issue bills of lading.

Accordingly, Delegation of Authority No. 15-A, Rev. 1, is amended as follows:

I. * * *

A. *Administratives*

* * * * *

6. *Chief, Supply Section, Procurement and Supply Branch*

a. To originate and certify commercial bills of lading for payment of transportation charges in accordance with FPMR 101-304-2.

b. To issue Government bills of lading.

Effective Date: November 6, 1979.

Dated: October 29, 1979.

Roger H. Jones,

Assistant Administrator for Data & Management Services.

[FR Doc. 79-34827 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-5114]

District of Columbia Investment Co., Inc.; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that the District of Columbia Investment Company, Inc. (District), 1420 New York Avenue, N.W., Suite 400, Washington, D.C. 20005, a Federal licensee under Section 301(d) of the Small Business Investment Act of 1958, as amended (Act), has filed an application pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1979)) for an exemption from the provisions of the conflict of interest regulation.

It is proposed that District invest $100,000 to acquire 10 percent of the outstanding common stock in Nova Imports, Inc. (Nova); loan Nova $100,000 maturing in seven (7) years and provide Nova with a $250,000 revolving loan for inventory and working capital. This company is presently owned by Alfredo Bartholomaus, 40 percent stockholder; Morris Bisker, 20 percent stockholder; Robert B. Washington, 20 percent stockholder and Vernon R. Coleman, 20 percent stockholder. Nova's primary business is the importation and distribution of wines into and throughout the United States.

Mr. Robert B. Washington, Jr., legal counsel for District, will own approximately 18 percent of Nova's stock after the licensee's investment therein. Pursuant to § 107.3(a) of the Reguations, mr. Washington is considered to be an associate of the licensee. Pursuant to § 107.3(f) of the Regulations, Nova is considered to be an associat4e of the licensee.

Accordingly, the transaction falls within the pruview of § 107.1004 requiring a prior written exemption therefrom.

Notice is further given that any person may, not later than Novembver 21, 1979, submit to SBA, in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the District of Columbia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

Dated: October 31, 1979.

[FR Doc. 79-34280 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/05-0028]

Fidelity Capital Corp. (FCC); Filing of Application for Transfer of Control of a Licensed Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the Regulations (13 CFR 107.701 (1979)), governing SBIC's for the transfer of control of Fidelity Capital Corporation, 380 Interstate North, Atlanta, Georgia 30339, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), License No. 04/05-0028.

Fidelity Capital Corporation was licensed on December 3, 1969. Its present combined paid-in capital and surplus is $3,531,631. The proposed transfer of control is subject to and contingent upon the approval of SBA.

The Applicant, American Financial Resources, Inc. (AFT), 180 Interstate North Parkway, Atlanta, Georgia 30339, is purchasing all of the issued and outstanding stock of FCC from F. M. Land Company, a subsidiary of Fidelity Mutual Life Insurance Co., Philadelphia, Pa.

The principal stockholders of AFR are: Mr. John K. Sisk, 1000 River Avenue, Jacksonville, Fla. 32204, Chairman of the Board and Vice President, 50 percent; and Mr. Alfred F. Skiba, 44 Chaumont Square NW., Atlanta, Ga. 30327, President, 50 percent.

Matters involved in SBA's consideration of the application include the general business reputation and character of the new owner and management, and the probability of successful operations of FCC under their management and control, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit to SBA, in writing, comments on the transfer of control. Any such communication should be addressed to the Acting Deputy Associate Administrator for Finance & Investment, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in newspapers of general circulation in Atlanta, Ga. and Jacksonville, Fla.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 30, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-34270 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1714; Amdt. No. 1]

Florida; Declaration of Disaster Loan Area

The above numbered (See 44 FR 62108) is amended in accordance with the President's declaration of September 29, 1979, to include Pasco and Hernando Counties in the State of Florida. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above named counties and adjacent counties within the State of Florida. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on November 29, 1979, and for economic injury until the close of business on June 30, 1980, at: Small Business Administration, District Office, 400 West Bay Street, Jacksonville, Florida 32202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 19, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-34282 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area Number 1695; Amdt. No. 1]

Mississippi; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 61719) is amended in accordance with the President's declaration of September 13, 1979, to include the Jasper and Lamar Counties in the State of Mississippi. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named counties and adjacent counties within the State of Mississippi. All other information remains the same. i.e., the termination dates for filing applications for physical damage is close of business on November 13, 1979, and for economic injury until the close of business on June 13, 1980.

(Catalog of Federal Domenstic Assistance Program Nos. 59002 and 59008.)

Dated: October 3, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-34281 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 718]

Nebraska; Declaration of Disaster Loan Area

The following 19 Counties and adjacent counties within the State of Nebraska constitute a disaster area as a result of natural disaster as indicated:

County	Natural Disaster(s)	Date(s)
Cuming	Hail	7/20/79
Madison	Hailstorm	9/5/79
Merrick	Hail and Wind Storm	9/5/79
Merrick	Hail and Twisting Wind Storm	7/14/79

County	Natural Disaster(s)	Date(s)
Merrick	Excess Rainfall	6/1/79-7/24/79
Pierce	Hail an Wind Storm	9/5/79
Rock	Strong Wind, Hail and Heavy Rain.	7/29/79
Sheridan	Hail	7/23/79, 8/30/79
Sheridan	Grasshoppers	Spring and Summer of, 1979.
Perkins	Hail	6/24/79, 7/27, 7/28/79
McPherson	Large Hail and High Wind.	7/27/79
Logan	Large Hail and High Wind.	7/27/79
Scotts Bluff	Hail, Wind and Rain	7/26/79, 7/27, 7/30/79
Scotts Bluff	Grasshippers	7/26/79,/7/27, 7/30/79
Chase	Hail	7/27/79, 7/31/79
Kimball	Hail	7/30/79
Valley	Hail	8/1/79
Red Willow	Hailstorm and High Wind.	8/25/79
Lincoln	Hail	8/25/79
Keith	Hail	8/25/79
Hitchcock	Hail, Hard Wid	7/3/79, 7/24/79
Furnas	High Wind and Hail	8/25/79
Dakota	Hail Storm	8/2/79

Eligible persons, firms and organizations may file application for loans for physical damage until the close of business on April 23, 1980, and for economic injury until the close of business on July 23, 1980, at: Small Business Administration, District Office, Emprire State Building, 19th and Farnam Street, Omaha, Nebraska 68102, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 1979.

William H. Mauk,

Acting Administrator.

[FR Doc. 79-34284 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5379]

New Oasis Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by New Oasis Captial Corporation (applicant), with the Small Business Administration pursuant to 13 CFR 107.102 (1979).

The officers, directors, and stockholders of the applicant are as follows:

James Huage, 220-30 43rd Avenue, Bayside, New York 11361, President/Director, 16% Stockholder.

Tsung-Han Liu, 8 Largo Lane, Livingston, New Jersey 07039, Treasurer/Secretary, Director, 12% Stockholder.

Nai-Phon Wang, 8 Largo Lane, Livingston, New Jersey 07039, Director, 16% Stockholder.

Tzu-Shong Yang, 54 Old Field Lane, Great Neck, New York 11020, Director, 10% Stockholder.

Ching-I Chang, 220 E. 54th Street, New York, New York 10022, Director, 10% Stockholder.

Jeui-Chu Chen, 220 E. 54th Street, New York, New York 10022, Chairman of the Board/Director, 8% Stockholder.

Friedrich Ko-Ming Li, 79-11 41st Avenue, Elmhurst, New York 11373, Director, 6% Stockholder.

The applicant will maintain its principal place of business at 145 East 52nd Street, 3rd Floor, New York, New York 10022. It will begin operations with $500,000 of private capital derived from the sale of 5,000 shares of common stock to the above and four other stockholders who will each own less than 10 percent of the applicant's stock.

The applicant will make investments nation-wide. However, initially, it will principally carry on business in the State of New York.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, for time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than November 21, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Dated: October 23, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-34279 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting; Public Meeting; Cancellation of Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, Maryland, public meeting scheduled at 10:00 a.m., Friday, November 9, 1979, at the Airport Holiday Inn—Airport & Elkridge Landing Roads, Linthicum, Maryland has been cancelled.

For further information, write or call L. C. Aaronson, Assistant District Director/Management Assistance, U.S. Small Business Administration, 630 Oxford Building, 8600 LaSalle Road, Towson, Maryland 21204—(301) 922-2233.

Dated: October 26, 1979.

K Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-34286 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5374]

Square Deal Venture Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On September 20, 1979, a notice was published in the Federal Register (44 FR 54575), starting that Square Deal Venture Capital Corporation, located at Lincoln and Jefferson Avenues, New Square, New York 10977, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1979), for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business October 1, 1979, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02-5374 to Square Deal Venture Capital Corporation.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Date: October 23, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-34275 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area Section 1706; Amdt. No. 1]

Texas; Declaration of Disaster Loan Area

The above numbered declaration (See 44 FR 62387) is amended in accordance with the President's declaration of September 25, 1979, to include Nueces and Montgomery Counties in the State of Texas. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named counties and adjacent counties within the State of Texas. All other information remains the same; i.e., the terminaton date for filing applications for physical damage is close of business on November 26, 1979, and for economic injury until the close of business on June 25, 1980, at:

Small Business Administration, District Office, One Allen Center, Suite 705, 500 Dallas Street, Houston, Texas 77002.

Small Business Administration, District Office, 222 E. Van Buren, Harlingen, Texas 78550.

or other locally announced loacations.

9Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: October 23, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-34283 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0302]

Transatlantic Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 1, 1979, a notice was published in the Federal Register (44 FR 45273) stating that Transatlantic Capital Corporation, 60 Batterymarch Street, Boston, Massachusetts, 02110 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1979)), for a License to operate as a small business investment company.

Interested parties were given until the close of business on August 16, 1979, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, and having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 01/01-0302 on October 24, 1979, to Transatlantic Capital Corporation pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: October 25, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-34278 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1704; Amdt. No. 1]

Virginia; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 61720) is amended by adding the adjacent Independent City of Hampton, Virginia. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on November 26, 1979, and for economic injury until the close of business on June 27, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 22, 1979.

William H. Mauk,

Acting Administrator.

[FR Doc. 79-34285 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0183]

Western Financial Capital Corp.; Application for a License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the Regulations (13 CFR 107.102 (1979), under the name of Western Financial Capital Corporation, 308 Temple Avenue, North, Fayette, Alabama 3555 for a license to operate in the State of Alabama as an SBIC, under the provisions of the Small Business Investment Act of 1958 (Act) as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and major stockholders are as follows:

Name, Title, and Percent

F.M. Rosemore, 740 West Columbus St., Fayette, Alabame 35555, President, Director, 30.

Andrew S. Rosemore, 1515 University Blvd. Tuscaloosa, Alabama 35401, Vice President, Director, 30.

Marion G. Rosemore, 740 West Columbus St., Fayette, Alabame 35555, Secretary, Treasurer, Director, 1.

The Applicant will begin operations with a capitalization of $500,000 which will be a source of long-term loans and venture capital for diversified small concerns. In addition to financial assistance, the Applicant will provide consulting services to its clients.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any interested person may not later than November 26, 1979, submit written comments on the proposed company to the Acting Associate Administrator for Finance and Investment, 1441, L Street, NW. Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in the Fayette, Alabama area.

(Catalog of Federal Domestic Assistance Program 59.011 Small Business Investment Companies.)

Dated: October 30, 1979.

Peter F. McNeish

Acting Associate Administrator for Finance & Investment.

[FR Doc. 79-34277 Filed 11-5-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1979 Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds; the Netherlands Insurance Co., Domestication and Change of Name

The United States Branch, N.V. The Netherlands Insurance Company, Est. 1845, which was incorporated under the laws of the Netherlands, has been domesticated and has formally changed its name to The Netherlands Insurance Company, a New Hampshire corporation, effective January 1, 1979. The company was last listed as an acceptable reinsuring company on Federal bonds at 44 FR 38101, June 29, 1979.

A certificate of authority as an

acceptable surety on Federal bonds dated July 1, 1979, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to The Netherlands Insurance Company, Keene, New Hampshire. This new certificate replaces the certificate of authority issued to the company under its former name, N.V. The Netherlands Insurance Company, Est. 1845. The underwriting limitation of $666,000 established for the company as of July 1, 1979 remains unchanged.

Certificates of authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: October 30, 1979.

D. A. Pagliai,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 79-34235 Filed 11-5-79; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

[Supplement to Department Circular Public Debt Series—No. 26-79]

Treasury Notes of Series B-1989; Interest

November 1, 1979

The Secretary announced on October 31, 1979, that the interest rate on the notes designated Series B-1989, described in Department Circular—Public Debt Series—No. 26-79, dated October 25, 1979, will be 10¾ percent. Interest on the notes will be payable at the rate of 10¾ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-34245 Filed 11-5-79; 8:45 am]

BILLING CODE 4810-40-M

INTERSTATE COMMERCE COMMISSION

[Permanent Authority Decisions Vol. No. 162]

Permanent Authority Decisions; Decision Notice

Correction

In FR Doc. 79-29967 appearing at page 56435 in the issue for Monday, October, 1, 1979, on page 56435, in the third column, in the paragraph "MC 145582 (Sub 2-F)" for Denmark Trucking, Inc., in the seventh line, "common carrier" should read "contract carrier".

BILLING CODE 1505-01-M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 79-31795 appearing at page 59707 in the issue for Tuesday, October 16, 1979, on page 59714, in the third column, in the paragraph "MC 30067 (Sub-13F)", for South Branch Motor Freight, Inc., the ninth and tenth lines should be deleted and the following inserted instead: "Koppers Co. at Green Spring, WV to points in OH, NY, NJ, and PA. (Hearing site: Baltimore, MD or Pittsburgh, PA.)

BILLING CODE 1505-01-M

[Notice No. 144]

Assignment of Hearings

October 31, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 108119 (Sub-124F), E. L. Murphy Trucking Company, transferred to Modified Procedure.

MC 72423 (Sub-7F), Platte Valley Freightways, Inc., now assigned for hearing on October 29, 1979 at Denver, CO, in a hearing room to be designated later.

Ex Parte No. 315 (Sub-1), in the matter of Kenneth R. Davis, now assigned for hearing on November 6, 1979 is postponed to January 29, 1980, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 29886 (Sub-363F), Dallas & Mavis Forwarding Co., Inc., now assigned for hearing on November 8, 1979 (1 day) at St. Louis, MO, is canceled and application dismissed.

AB-111 (Sub-1F), Detroit, Toledo and Ironton Railroad Company abandonment near Napoleon and Wauseon in Henry and Fulton Counties, OH, now assigned for hearing on December 17, 1979 (5 days) at Wauseon, OH, in a hearing room to be later designated.

MC 123405 (Sub-65F), Food Transport, Inc., now being assigned for hearing on January 11, 1980 (1 Day), at Orlando, FL. in a hearing room to be designated later.

MC 146623 F, Stamey Enterprises, Inc., now being assigned for hearing on January 14, 1980 (5 days), at Miami, FL, in a hearing room to be designated later.

MC 65895 (Sub-5F), Reddaway's Truck Line, now assigned for hearing on October 29, 1979, at Salem, OR, is postponed to January 28, 1980 (9 days), at Salem, OR, in a hearing room to be designated later.

MC 115311 (Sub-338F), J & M Transportation Company, Inc., Application dismissed.

MC 121423 (Sub-3F), Boyd Naegeli, Inc., now being assigned for hearing on February 20, 1980 (3 days), at Dallas, TX, in a hearing room to be designated later.

MC 145500 (Sub-1F), East Texas Cartage Company, now being assigned for hearing on February 25, 1980 (5 days), at Dallas, TX, in a hearing room to be designated later.

MC 133916, O'Nan Transportation Company, Inc., now being assigned for hearing on November 28, 1979 (3 days), at Louisville, KY, in a hearing room to be designated later.

MC 124004 (Sub-46F), Richard Dahn, Inc., now being assigned for hearing on November 29, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 115841 (Sub-659F), Colonial Refrigerated Transportation, Inc., An AL Corporation, now being assigned for hearing on December 12, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 95540 (Sub-1079F), Watkins Motor Lines, Inc., now being assigned for hearing on December 11, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 123048 (Sub-426F), Diamond Transportation System, Inc., now being assigned for hearing on December 6, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 2368 (Sub-91F), Bralley-Willett Tank Lines, Inc., now being assigned for hearing on November 29, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 8973 (Sub-54F), Metropolitan Trucking, Inc., now being assigned for hearing on December 6, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 116004 (Sub-52F), Texas Oklahoma Express, Inc., now being assigned for continued hearing on November 27, 1979 (4 days), at the Trade Winds Central Inn, 3141 E. Skelby Drive, Tulsa, OK.

MC 139934 (Sub-4F), All Southern Trucking, Inc., now assigned for hearing on November 8, 1979 at Tampa, FL, will be at the Holiday Inn Cyprus, 4500 West Cyprus, Tampa, FL.

MC 116544 (Sub-165F), Altruk Freight Systems, Inc., now assigned for hearing on December 11, 1979, at Orlando, FL, will be held at the Hilton Inn West, 3200 West Colonial Drive, Orlando, FL.

MC 41406 (Sub-128F), Artim Transportation System, Inc., Application Dismissed.

MC 140818 (Sub-1F), The Gray Line of Seattle, Inc., now assigned for hearing on November 27, 1979, at Seattle, WA., will be held at the Federal Building, Room 3086, 1915 Second Ave., Seattle, WA.

MC 138237 (Sub-8F), Metro Hauling, Inc., now assigned for hearing on December 3, 1979, at Seattle, WA., will be held at the Federal Building, Room 3086, 1915 Second Ave., Seattle, WA.

No. 37276, Coal, Wyoming To Redfield, Ark., now being assigned for Prehearing conference on November 19, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 146960 F, Virginia Tours, Inc., now assigned for hearing on November 26, 1979 at Richmond, VA., will be held at the U.S. Courthouse Building, Courtroom, 10th & Main Street, Richmond, VA.

FD 29099, Petition of City of St. Louis, Mo. for order Requiring Grant of Trackage Rights and Authorizing Related Changes in Terminal Operations, now assigned for hearing on November 27, 1979, at St. Louis, will be held at the Soldier Memorial, Room No. 204, 1315 Chestnut Street, St. Louis, MO.

I&S No. 9228, Surcharge On Low Density And Branch Lines, CRI&P, October 1979, now being assigned for prehearing conference on November 27, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 116254 (Sub-233F), Chem-Haulers, Inc., now being assigned for hearing on December 11, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 117416 (Sub-62F), Newman and Pemberton Corporation, now being assigned for hearing on January 10, 1980, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 116254 (Sub-235F), Chem-Haulers, Inc., now being assigned for hearing on January 9, 1980, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 143059 (Sub-57F), Mercer Transportation Company, a Texas Corporation, now being assigned for hearing on December 5, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 95540 (Sub-1082F), Watkins Motor Lines, Inc., now being assigned for hearing on January 17, 1980, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 134082 (Sub-18F), K. H. Transport, Inc., now being assigned for hearing on December 18, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 135797 (Sub-186F), J. B. Hunt Transport, Inc., now being assigned for hearing on December 13, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 119349 (Sub-12F), Starling Transport Lines, Inc., now being assigned for hearing on December 4, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 6774 (Sub-4F), Smith Dray Line & Storage Co., Inc., now being assigned for hearing on December 17, 1979, (5 Days) at Charlotte, NC. in a hearing room to be designated later.

AB 43 (Sub-45), Illinois Central Gulf Railroad Company Abandonment at Rio, Louisiana and Lexie Mississippi in Washington Parish, Louisiana, and Walthal County, Mississippi, now assigned for hearing on November 7, 1979, at Chicago, IL. will be held at the Everett Mckinley Dirksen Building, Room 349, 230 South Dearborn Street, Chicago, IL.

MC-C-10327, CRST, Inc., and the Kinnison Trucking Company Investigation and Revocation of Certificates and Certificate of Registration, now being assigned for hearing on December 11, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 2960 (Sub-25F), England Transportation Company of Texas, now being assigned for hearing on January 29, 1980 (9 Days), at Dallas, TX. in a hearing room to be designated later.

MC 33641 (Sub-140F), IML Freight, Inc., now assigned for hearing on November 26, 1979 at Salt Lake City, UT. will be held at the Little America, 500 South Main Street, Salt Lake City, UT., and continued to December 3, 1979, at the Dallas Hilton, 1914 Commerce Street, Dallas, TX.

MC 111729 (Sub-744F), Purolator Courier Corp., now assigned for continued hearing on November 20, 1979 (2 days) at Memphis, TN, will be held in Room No. 437, Federal Building, 167 North Main.

MC 31389 (Sub-267F), Mclean Trucking Company, now assigned for hearing on November 26, 1979 (3 days) at Indianapolis, IN, will be held in Room No. 402, Old Federal Building, 46 East Ohio Street, and on November 28, 1979 will be held in Room No. 284, New Federal Building, 575 North Penn.

MC 14252 (Sub-46F), Commercial Lovelace Motor Freight, Inc., now assigned for hearing on November 26, 1979 (1 week) at Parkersburg, W. Va., will be held at the Holiday Inn-Maple Room, U.S. 50 at Junction I-77, 7th Street Exit, instead of Court Room—5th Floor, Post Office Building, 5th and Julianna Street.

Agatha L. Mergenovich,

Secretary.

[FR Doc 79-34201 Filed 11-5-79; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: October 30, 1979.

In our decisions of September 11, 18, 25, and October 2, 9, 16, and 23, 1979, a 9.5-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

Although the weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 9.9 percent, we are authorizing that the 9.5-percent surcharge on this traffic remain in effect. All owner-operators are to continue to receive compensation at the 9.5-percent level. In addition, no change will be made in the existing authorization of a 1.7-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, nor in the authorization of a 3.7 percent surcharge for the bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the

Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered:

This decision shall become effective Friday, 12:01 a.m., November 2, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Commissioner Gresham did not participate in the disposition of this proceeding. Commissioner Alexis was absent and did not participate in the disposition of this proceeding.

Agatha L. Mergenovich,

Secretary.

Appendix.—*Fuel Surcharge*

Base Date and Price Per Gallon (Including Tax)	
January 1, 1979	63.5¢

Date of Current Price Measurement and Price Per Gallon (Including Tax)	
October 29, 1979	100.5

Average Percent: Fuel Expenses (Including Taxes) of Total Revenue

(1) From transportation performed by owner operators (Apply to all truckload rated traffic)	(2) Other (Including less truckload traffic)	(3) Bus carriers
16.9%	2.9%	6.3%
	Percent Surcharge Developed	
9.9%	1.7%	3.7%
	Percent Surcharge Allowed	
9.5%	1.7%	3.7%

[FR Doc. 79-34199 Filed 11-5-79; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398; Authorization Order No. 7]

Kansas City Terminal Railway Co.—Directed To Operate Over—Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

Decided: October 30, 1979.

On September 26, 1979, we directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. 11125 over the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398 (decided and served September 26, 1979; published in the Federal Register on October 1, 1979 at 44 FR 56343).

In "DRC Report No. 8," the DRC has petitioned the Commission for authority to execute a contract with the Regional Transportation Authority (RTA) regarding the continuation of RI commuter operations in Chicago, IL, during the directed-service period. *See* DRC Report No. 8 (dated October 23, 1979).

In 1976, RTA and RI Trustee entered into a number of agreements concerning RI's commuter operations in Chicago, IL. Under these agreements, RTA is to reimburse the RI Trustee for providing commuter service as well as improvements in track and commuter equipment. The monthly payments to the RI Trustee under these agreements are approximately $750,000.

RTA has expressed a willingness to make these payments to the DRC during the directed-service period. Accordingly, RTA and the DRC have drawn up a draft agreement along these lines, and have submitted this draft agreement for our approval. *See* the appendix to DRC Report No. 8.

We conclude that the draft agreement should be approved for a number of reasons. First in Supplemental Order No. 4 (served October 15, 1979) [44 FR 61127, Oct. 23, 1979], the Commission authorized the DRC to continue those RI agreements or arrangements which are essential to the provision of directed service, without advance Commission approval. Since the proposed agreement would in effect preserve a pre-existing RI arrangement which is essential to the provision of directed service, we believe such an agreement warrants approval. Morever, approval of the proposed agreement will reduce the DRC's need for further Federal funding, by enabling the DRC to receive subsidies from RTA for the provision of Chicago commuter operations. Further, RTA will have assurance that its tax-generated funds need only be paid once and that Chicago commuter service will continue unaffected by the DRC's budgetary constraints.

For the foregoing reasons, we believe the proposed agreement between RTA and the DRC should be approved.

We find:

(1) This action will not significantly affect either the quality of the human environment or conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered:

(1) The proposed agreement between RTA and the DRC (attached as the appendix to DRC Report No. 8) is hereby approved.

(2) This decision will be effective on its service date.

By the Commission, Railroad Service Board, Members Joel E. Burns, Roberts S. Turkington, and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34200 Filed 11-5-79; 8:45 am]

BILLING CODE 7035-01-M

[ICC Order No. 53 Under Service Order No. 1344]

Michigan Northern Railway; Rerouting of Traffic

TO: All railroads:

In the opinion of Joel E. Burns, Agent, the Michigan Northern Railway is unable to transport promptly all traffic offered for movement to and from Thompsonville and Cadillac, Michigan, due to fire damage to the bridge over the Manistee River.

It is ordered,

(a) *Rerouting traffic.* The Michigan Northern, being unable to transport promptly all traffic offered for movement to and from Thompsonville and Cadillac, Michigan, due to fire damage to the bridge over the Manistee River, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authorized for the routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic.

Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 1:00 p.m., October 10, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 10, 1980, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 10, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-34198 Filed 11-5-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-79-153-C]

R.D.K. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

R.D.K. Coal Company, Inc., P.O. Box 102, E. McDowell, Kentucky 41623, has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its No. 13 Mine, located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the use of cabs or canopies on electric face equipment in the petitioner's mine.

2. The petitioner is mining a coal seam which averages 41 inches in height. Uneven bottom conditions further limit clearances at times.

3. The petitioner believes that cabs or canopies on its electric face equipment under these conditions will result in a diminution of safety because they do not allow the equipment operator proper visibility for safe operation of the equipment while remaining under the cab or canopy.

4. For this reason, the petitioner requests relief from the application of the standard to its mine.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 6, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34247 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-144-C]

Danny Boy Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Danny Boy Coal Company, Inc., P.O. Box 86, Canada, Kentucky 41519, has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its No. 2 Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the use of cabs or canopies on the petitioner's scoops, coal drill, cutter and pinners.

2. The petitioner is mining coal seams ranging from 41 to 54 inches in height.

3. Due to undulations in the coal seams, canopies on the petitioner's equipment have to be installed in a low configuration in order that they do not strike the roof and damage roof support.

4. This low configuration results in a confined operating compartment, limiting and impairing the equipment operator's visibility.

5. For this reason, the petitioner believes that application of the standard to its mine will result in a diminution of safety and therefore requests relief from the application of the standard to its mine.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 6, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34248 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-148-C]

South Union Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

South Union Coal Company, Route 2, Box 165-A, Morgantown, West Virginia has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations) to its Jamison No. 12 Mine located in Morgantown, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. Specified entries of the petitioner's mine have deteriorated due to adverse conditions. Roof falls have left some portions of these return airways nearly impassable and hazardous to travel and examine.

2. These entries are not designated as return escapeways.

3. Rehabilitation of the entries is neither practical nor feasible.

4. As an alternative to weekly inspections of the entries, the petitioner proposes to establish three air monitoring checkpoints, where daily air and methane readings will be made and recorded by certified personnel.

5. The petitioner states that this alternative method will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 6, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34249 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting and Meeting of the Subgroup on Health Standards

Notice is hereby given that the Subgroup on Health Standards of the Advisory Committee on Construction Safety and Health will meet on November 26, 1979 in Room N–5437, New Department of Labor Building, 3rd Street and Constitution Avenue, NW., Washington, D.C. The meeting is open to the public and will begin at 9:30 a.m.

The Subgroup will thoroughly review OSHA health standards as they relate to the construction industry and will subsequently submit a report to the Advisory Committee on Construction Safety and Health containing their findings and including their recommendations.

The meeting agenda includes a discussion of major issues for the Subgroup report. The following issues will be among those discussed in the report: Notification of use and emergenies; Exposure monitoring; Regulated areas; Methods of compliance; Respiratory protection; Emergency situations; Protective clothing & equipment; Housekeeping; Waste disposal; Hygiene facilities & practices; Medical surveillance; Employee information & training; Signs & labels; Recordkeeping; and Observation of monitoring.

Written data, views or comments on these subjects are welcome.

The full Advisory Committee on Construction Safety and Health will meet on November 27–28, 1979 in Room N–5437, New Department of Labor Building, Washington, D.C.

The meeting is open to the public and will begin at 9:00 a.m.

The meeting agenda includes a status report from the Subgroup on Health Standards and discussion of work in confined spaces, enforcement activity, proposed revisions to the tunnel standard and general discussion on construction safety and health standards.

The Advisory Committee on Construction Safety and Health was established under section 107(c)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion on the extent to which time permits. Communications may be mailed to: Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, Room N–3635, OSHA, 3rd Street and Constitution Ave, NW., Washington, D.C., Telephone 202–523–8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C. this 31st day of October 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79–34317 Filed 11–5–79; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefit Programs

[Application No. D–156]

Proposed Exemption for Certain Transactions Involving the Mead Retirement Auxiliary Trust

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption was requested in an application filed by the Mead Corporation (Mead) for transactions involving the investment of assests of the Mead Retirement Auxiliary Trust (MRAT) in the construction of an office building (the Building) in Dayton, Ohio (the City) and for related transactions. The proposed exemption, if granted, would affect participants and beneficiaries of certain retirement plans sponsored by Mead and its affiliates, Mead as lessor of the Building and certain other persons participating in the related transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 3, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–156. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen, of the Department of Labor, telephone (202) 523–6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), 407(a) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code.

The proposed exemption was requested in an application filed by Mead, the sponsoring employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the pending exemption which are summarized below. Interested persons are referred to the application and supporting documents on file with the Department for a complete statement of the representations of the applicant.

1. MRAT is one of four trusts established to provide a vehicle for investing the funds contributed to The Mead Retirement Plan and other retirement and pension plans maintained by Mead. It is a qualified pension trust, exempt from taxation under the provisions of section 501(a) of the Code. The Chase Manhattan Bank, National Association serves as trustee of MRAT. As of December 31, 1975, the

fair market value of MRAT's assets was $16,077,024, of which $13,252,883 was invested in employer real property.

2. The Building is a fundamental part of a plan adopted by the City for revitalization and modernization of its downtown area.

3. To encourage investment in the Building, the Galbreath-Dayton Community Urban Redevelopment Corporation (the 1728 Corporation) was formed so that the Building would receive the advantages of real estate tax abatement under Chapter 1728 of the Ohio Revised Code. The 1728 Corporation is owned by John W. Galbreath.

4. The City and 1728 Corporation entered into an Agreement to Lease and to Construct Improvements (the Prime Agreement to Lease) and a Lease Agreement (the Prime Lease), respectively dated March 19, 1974, and June 5, 1975. These agreements committed the City to construct parking facilities for use by the Building, acquire land and construct a plaza and substructure on which the Building would be erected, and lease certain air rights and grant certain easements to the 1728 Corporation. The 1728 Corporation agreed to pay $1,000,000 toward the cost of constructing the plaza and the substructure. The lease commenced on September 1, 1975, and will run for a period of sixty-five years, with an option to renew for an additional twenty-five years. Rentals during the initial period are asserted to be equitable; and rental for the renewal term shall be fair market rental. The 1728 Corporation is obligated to construct the Building in accordance with plans and specifications approved by the City, to maintain and repair the Building, to pay all taxes and other governmental charges imposed on the Building, and to maintain adequate property and liability insurance on the Building.

5. The 1728 Corporation and Mead Tower Company (the Partnership) entered into an Agreement to Sublease and to Construct Improvements (the Agreement to Sublease) and a Sublease, respectively dated March 19, 1974 and June 5, 1975. Under these agreements, the 1728 Corporation subleased the air rights, the easements, and the Building to the Partnership, and the Partnership assumed the 1728 Corporation's obligation under the Prime Agreement to Lease and the Prime Lease. The sublease commenced on September 1, 1975, and will run for a period for sixty-five years, with an option to renew for an additional twenty-five years. It provides for two types of rent during the initial period: ground rent and increased ground rent. Ground rent is equal to the rent payable by the 1728 Corporation to the City under the Prime Lease; and increased ground rent is sufficient to amortize the principal and interest on the second mortgage permanent financing (discussed below). Ground rent for the renewal period shall be fair market rental. Both types of rent are unconditionally payable, without diminution or abatement.

6. On September 1, 1995, when the tax abatement period terminates, the 1728 Corporation must convey title to the Building to the Partnership in exchange for $1.00.

7. The Partnership's general partners are Distribution and Export Merchandising, Inc. (Merchandising), which is wholly-owned by MRAT, and the Dayton Redevelopment Corporation (Redevelopment), which is owned by a corporation controlled by a son and a daughter of John W. Galbreath. The Partnership's limited partners are Charles Brooks and Lawrence Friel, business associates of John W. Galbreath.

8. The capital contributions of the partners are as follows: $50,000 from Merchandising, $25,000 from Redevelopment, $12,500 from Mr. Brooks, and $12,500 from Mr. Friel. Partners share proportionally in the profits and losses of the Partnership and in the tax benefits flowing from construction of the Building. Partners are also guaranteed a per annum rate of return on their capital contributions equal to the average rate the Partnership pays for long-term debt.

9. The affairs of the Partnership are managed by a committee consisting of three members—one selected by Merchandising, one selected by Redevelopment, and one selected by the law firm of Smith and Schnacke. The unanimous vote of the committee is required in order to approve contracts with any entity directly or indirectly affiliated with any partner or member of the committee. Other decisions are made by majority vote.

10. Merchandising and the other partners agreed upon a series of options and obligations under which Merchandising will acquire most or all of the other partners' interest in the Partnership.

a. Merchandising has an option to purchase, at any time after 1990, all or any part of 2½sths of the general partnership interest of Redevelopment for a fixed price increasing each year. Such price is fixed at $100,000 for 1990, and increases to $870,000 by 2006. Redevelopment has an option to sell all or any part of its partnership interest to Merchandising at any time after March 14, 1976 for $25,000 or a proportionate part thereof. In the event that Redevelopment still possesses all or part of the aforesaid 2½sths interest on January 1, 2007, then Merchandising must purchase the remainder of such interest at that time for $1,000,000 or a proportionate part thereof. Merchandising also has a right of first refusal to purchase, at a matching price, the other ½s interest of Redevelopemnt, should Redevelopment desire to sell it.

b. Merchandising has an option to purchase the limited partnership interests of Messrs. Brooks and Friel, at any time after 1990, and increases to $870,000 by 2006. Mr. Brooks and Mr. Friel each has an option to sell his total interest to Merchandising at any time after March 14, 1976 for $25,000. In the event that Merchandising has not purchased the interests by January 1, 2007, then Merchandising must purchase such interests at that time for a price of $500,000 each.

11. Pursuant to an Agreement to Execute a Construction Contract, respectively dated March 19, 1974 and June 10, 1975, the Partnership hired John W. Galbreath and Company (Galbreath), a sole proprietorship of John W. Galbreath, to construct the Building. The construction price is $19,126,390, plus $300,000 as Galbreath's overhead, plus $956,320 as architects' fees, subject to certain credits and adjustments. In subsequent agreements, architects' fees were increased by $8,867.77 and the Partnership consented to an increase in the construction price of up to $250,000. In addition, Mead guaranteed to Galbreath performance by the Partnership of all its obligations under the Construction Contract.

12. Pursuant to a Management Contract dated March 19, 1974 the Partnership hired Galbreath as managing agent for the Building for an annual fee of $75,000.

13. The Galbreath Mortgage Company (the Company arranged the first mortgage permanent financing for the Building (discussed below), which involved customary mortgage banking services, including appraising the property, contacting and making presentations to potential institutional lenders, receiving and transmitting responses from potential lenders, and making detailed presentations to selected lenders. The fee for these services was $160,000. At the time the first mortgage fincancing arrangements were made, the Company was owned by John W. Galbreath.

14. The terms of the Construction Contract, the Management Contract, and the agreement under which the Company provided mortgage banking

services were reached through negotiation, and are asserted to be fair.

15. Construction of the Building is financed primarily by non-recourse loans form Winters' National Bank and Trust Company (Winters) in total amounts of $24,600,000. The loans are evidenced by two categories of notes: a note issued by the Partnership in the principal amount of $16,000,000 (First Mortgage Note) and two notes issued by the 1728 Corporation in the aggregate principal amount of $8,600,000 (Second Mortgage Notes). The First Mortgage Note is secured by (1) a first mortgage executed by the 1728 Corporation with respect to its prime leasehold, the easements, and title to the Building and (2) an assignment of the Mead Lease and the rents payable thereunder (discussed below). The Second Mortgage Notes are secured by (1) a second mortgage executed by the 1728 Corporation with respect to its prime leasehold, the easements, and title to the Building, (2) an assigment of the Sublease and increased ground rent payable thereunder, and (3) a Consent and Agreement under which Mead agrees to make payments of the increased ground rent and liquidated damages, directly to the second mortgage lenders. The Partnership and the first mortgage lender, as assignee of the Mead Lease, have consented to this agreement. While the notes are held by Winters, they will bear interest at an annual rate of 1½ percent above Winters' prime rate.

16. At the end of the construction period, Winters will assign the First Mortgage Note to the New York State Teachers Retirement System (first mortgage lender) and the Second Mortgage Notes to the Guardian Life Insurance Company of America and the Teachers Insurance and Annuity Association of America (second mortgage lenders). The First Mortgage Note will run for thirty years plus the construction period, and bear interest at a rate of 8¼ percent per annum after assignment to the first mortgage lender. The Second Mortgage Notes will run for twenty-five years plus the construction period, and bear interest at a rate of 10⅜ percent per annum after assignment to the second mortgage lenders.

17. Construction costs are also financed by a $1,250,000 loan from Merchandising to the Partnership. The loan is evidenced by notes that run for thirty years plus the construction period, bear interest at a rate of 10⅜ percent per annum, and are secured by a mortgage subordinated to the first and second mortgages. Redevelopment is obligated to repay up to $300,000 of the loan; and John W. Galbreath has personally guaranteed performance of this obligation.

18. Pursuant to an Agreement to Lease and Lease Agreement (the Mead Lease), respectively dated March 19, 1974 and June 5, 1975, Mead contracted with the Partnership to lease all rentable space in the Building for a period of thirty years, with an option to renew for seven additional consecutive five year terms. Rental during the initial period is estimated at $10.76 per square foot annually, which is substantially higher than current annual rental rates for competitive office space in the City, and is sufficient to support the financing for the Building. Rental for any renewal term shall be fair market rental.

19. Under the Mead Lease, Mead must pay three types of rent: ground rent, increased ground rent, and improvement rent. Ground rent represents the amount payable by the 1728 Corporation to the City under the Prime Lease. Increased ground rent is equivalent to the increased ground rent payable by the Partnership to the 1728 Corporation under the Sublease, and is in amounts necessary to pay the second mortgage permanent financing for the Building. Both types of rent are unconditionally payable, without diminution or abatement. Improvement rent is more than adequate to cover: (1) the debt service on the first mortgage permanent financing, (2) the debt service on the loan from Merchandising, (3) the guaranteed interest payments on the $100,000 capital contributions of the partners to the Partnership, and (4) the real estate tax expense and operating expenses for the Building. A Supplemental Agreement to the Mead Lease dated June 5, 1975 requires Mead, under certain circumstances, to pay additional improvement rent sufficient to cover costs associated with the construction of the Building in excess of costs for which funds are committed.

20. Mead is renting all the space in the Building at inflated rentals in order to enable the Partnership to obtain construction financing, and intends to sublease unused space at rentals less than what it must pay the Partnership. Mead appointed Galbreath as its exclusive agent for subleasing space in the Building. For these services, Galbreath will receive $100,000 for each of the first two years and one-fourth of Mead's profit from subleasing such space thereafter. Pursuant to a Reimbursement Agreement dated March 19, 1974 and subsequent amendments, the Parnership agreed to reimburse Mead—to the extent that the Partnership has a positive net cash flow—for losses incurred by Mead from subleasing or the inability to sublease space in the Building. The definition of "net cash flow" contained in the Reimbursement Agreement, will generally permit the Partnership to recover out of its revenues its expenditures in connection with the Building plus the guaranteed interest payments on the partners' capital contributions to the Partnership.

21. As of March 29, 1977, construction of the Building was complete except for some incidental interior work, and Mead had moved all of its offices into the Building.

22. In summary, the applicant represents that the transactions involving the investment of MRAT assets in the construction, financing, leasing and operation of the Building meet the criteria of section 408(a) of the Act because: (a) the rental payments under the Mead Lease exceed the fair market rental value of comparable space in the City and are sufficient to provide for the servicing of all outstanding debt on the Building and the guaranteed interest payments on the partner's capital contributions to the Partnership, (b) before contracts involving dealing with any entity directly or indirectly affiliated with a party related to the Partnership interests is approved, it must receive the unanimous vote of the Partnership Committee (such Committee includes a member unrelated to any entity who was a party to any of the executed transactions), (c) the City has made a substantial investment in the land and certain improvements, although not directly in the Building, and has an independent financial interest in ensuring that the urban development project, of which the construction and leasing of the Building from an integral part, is financially sound, and (d) Mead plans participating in the Partnership through MRAT are not personally liable on the mortgage debt, hence liability is limited to the funds advanced to the Partnership. With respect to all transactions covered by this exemption the trustees represent that the subject transactions are appropriate for and in the best interests of the participating plans.

Notice to Interested Persons

Mead will undertake to notify all interested persons of the pendency of this exemption. Such notice will contain a copy of the notice of pendency of the exemption as published in the Federal Register and will inform interested persons of their right to comment within the time period set forth in the notice of

pendency. Mead will post its notice on bulletin boards and other appropriate places throughout its facilities and the facilities of related companies where participants of the plans are employed. In addition, Mead will send a copy of its notice by certified mail to each employee organization which has participants of the plans as members.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to MRAT's participation in the Partnership and in transactions relating to the construction, financing, leasing and operation of the Building.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to which the exemption will apply.

Signed at Washington, D.C., this 26th day of October, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-34057 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-1249]

Proposed Exemption for Certain Transactions Involving the Southern Illinois Division Chapter, NECA-IBEW Local 702 Joint Apprenticeship and Training Fund

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt from the restrictions of section 406(a)(1)(A) and (D) of the Act the purchase by the Southern Illinois Division Chapter NECA-IBEW Local 702 Joint Apprenticeship and Training Fund (the Plan) of certain improved real property from persons who are parties in interest with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments must be received by the Department on or before December 7, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 10, 1977.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. L-1249. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: R. F. Nuissl, of the Department of Labor, telephone (202) 523-6916. [This is not a toll-free number.]

SUPPLEMENTARY INFORMAITON: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a)(1)(A) and (D) of the Act. The proposed exemption was requested in an application filed on behalf of the trustees of the Plan, pursuant to section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representatives

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a multiple employer welfare plan providing apprenticeship and journey training to approximately 92 particpants. Established in 1967, the Plan is managed by a Board of Trustees (the Board) consisting of three trustees appointed by Local 702 of the International Brotherhood of Electrical Workers (the Local), which has 450 members who are eligible to participate in the Plan's programs, and three trustees appointed by an employer associations, the Souther Illinois Chapter National Electrical Contractors Association (the Employer Association).

2. Between 1972 and 1977 the Plan's training programs were conducted in a rented facility located in West Frankfort, Illinois, which proved inadequate to meet the Plan's needs. After an extensive search for an alternative facility, the Plan replaced this facility by purchasing on January 10, 1977 for a total cash purchase price of $112,000 from Dean L. Hammers and Ramona K. Hammers (the Sellers) fee simple title to a parcel of improved real property located at 106 North Monroe Street, West Frankfort, Illinois (the Property), containing three acres of land and a 6000 square foot commercial building (the Building). The Building is air conditioned and provides adequate space for classroom, shop and office purposes. The Property is conveniently located and provides ample parking space for participants. The decision by the Board to purchase the Property was made after the Board concluded that no existing structure was avaialble in West Frankfort or neighboring communities which would be adequate to meet the Plan's needs. Moreover, the Board determined that the Property met the Plan's requirements at a lower cost than would have been the case if the Plan were to construct a comparable building upon land already owned by the Plan. The Plan financed the transaction by means of a conventional $112,000 7½% mortgage loan from the Bank of Zeigler, Zeigler, Illinois.

3. An appraisal dated December 13, 1976 by Burton Wills, and independent professional real estate appraiser, estimates that as of that date the aggregate fair market value of the Property was $125,000. The Sellers had acquired the land in question as joint tenants in 1975 for a price of $4,500 and had constructed the improvements located thereon for a total cost of $80,000.

4. At the time of the transaction, Dean L. Hammers and Ramona K. Hammers were, respectively, President and Secretary and 50% stockholders of Hammer Electric, Inc. (the Employer), and contributing employer with respect to the Plan. Up to twelve employees of the Employer are eligible for participation in the Plan's programs, and two of the Employer's employees were enrolled as Plan participants during December 1976 and January 1977. Between 80 to 100 other employers participate in the Plan's programs from time to time. At the time the transaction was considered, approved and consummated by the Board, neither the Employer nor either of the Sellers was serving as a Plan trustee. Moreover, the Employer is not and was not at the time of the transaction a member of the Employer Association which appoints the Plan's trustees. The applicant represents that the Sellers did not participate, directly or indirectly, in the decision of the Board to purchase the Property.

5. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows:

(1) The Property was purchased by the Plan at a price below appraised fair market value at the time of the transaction.

(2) No other facility suitable for the Plan's needs was available at the time of the transaction or could then be built for a comparable price.

(3) The purchase of the Property by the Plan was a relatively simple one-time transaction which did not involve ongoing dealing between the Plan and the Sellers.

(4) Neither the Employer nor the Sellers participated, directly or indirectly, in the decision of the Board to enter into the transaction.

The applicant further represents that, if the requested exemption were denied, the Plan would suffer economic hardship and loss because of the continued unavailability of existing alternative facilities in the area suitable for the Plan's needs. In this connection, the applicant represents that the cost of constructing a comparable new facility would substantially exceed the proceeds which would be realized by the Plan from the sale of the Property to an unrelated party in an arm's length transaction.

Notice to Interested Persons

A copy of this notice of pendency of the proposed exemption will be delivered by the Board to the Local, which will be requested to post such copy for a period of not less than 30 days on its membership bulletin board. Copies of this notice of pendency will also be mailed by first class mail to the Employer Association, all contributing employers with respect to the Plan who are not members of the Employer Association and to all members of the Local covered by relevant agreements between the Local and the Employer Association. Copies of this notice of pendency shall be posted and mailed no later than 10 days after its publication in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a)(1) (B), (C) or (E) or 406(b) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, effective January 10, 1977 the restrictions of section 406(a)(1) (A) and (D) of the Act shall not apply to the purchase of the Property by the Plan from the Sellers for an aggregate cash consideration of $112,000, provided that this amount did not exceed the fair market value of the Property at the time of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representation contained in the application are true and complete, and that the application accurately describes all material terms of the transaction.

Signed at Washington, D.C., this 27th day of October, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-34058 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-63; Exemption Application No. D-1466]

Exemption From the Prohibitions for Certain Transactions Involving the Blue Chips Stamps Employees' Pension Plan and Trust

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits certain past extensions of credit to the Blue Chip Stamps Employees' Pension Plan (the Plan) by the Illinois National Bank and Trust Company (the Trustee) the Trustee of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 1979 notice was published in the Federal Register (44 FR 52371) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the interest free loans of money made by the Trustee to the Plan as follows: $8,972.11 on December 27, 1978; $126,800.63 on January 3, 1979; $16,049.70 on January 8, 1979; $5,935.50 on January 9, 1979; and $4,591.15 on January 26, 1979. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to and administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the code and the procedures set forth in ERISA Procedures 75-1 (40 FR 18471, april 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the code shall not apply to the following interest free loans of money made by the Trustee to the Plan: $8,972.11 on December 27, 1978; $126,800.63 on January 3, 1979; $16,049.70 on January 8, 1979; $5,935.50 on January 9, 1979 and $4,591.15 on January 26, 1979.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 27th day of October, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-34059 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transction Exemption 79-64; Exemption Application No. D-1024]

Exemption From the Prohibitions for Certain Transactions Involving the Times Herald Pension Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale for cash of real property by the Times Herald Pension Plan (the Plan) to the Times Herald Printing Company (the Employer), a party in interest.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 1979 notice was published in the Federal Register (44 FR 52370) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan to the Employer for cash of real property situated at 1207 Patterson Street, Dallas, Texas, provided that the price is not less than the fair market value of the property at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 27th day of October, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-34060 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-65; Exemption Application No. D-700]

Employee Benefit Plans; Exemption From the Prohibitions for Certain Transactions Involving Charity Hospital Association, Inc., Deferred Compensation Plan

AGENCY: Department of Labor.

ACTION: Grant of Individual exemption.

SUMMARY: This exemption would exempt loans of money by Charity Hospital Association, Inc. (CHA) to Charity Hospital Association, Inc. Deferred Compensation Plan (the Plan) and a proposed guarantee which constitutes an extension of credit to the Plan by Rush-Presbyterian—St. Lukes Medical Center (Rush), which is an employer of employees covered by the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 31, 1979 notice was published in the Federal Register (44 FR 51378) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code, for the above-described loans of money by CHA to the Plan and guarantee by Rush. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No requests for a hearing were received by the Department, however one comment was received from the Plan's representative. This comment stated that the proposed exemption was incorrect in stating that CHA had merged with Rush. Rush has entered into an agreement with CHA

whereby Rush assumed the management of the hospital which had been operated by CHA and also became the employer of CHA employees. CHA, however, remains a separate corporation.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact that the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) (1) and (3) of the Act and section 4975(c)(1) (E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act, and the taxes imposed by section 4975(c)(1) (A) through (D) of the Code shall not apply, effective January 1, 1975, to the past loans of cash by CHA to the Plan totalling $398,514.51, to the loan of cash by CHA to the Plan for the payment of the mortgage on the North Carolina Property, and to the proposed guarantee by Rush of the mortgage note executed by Flamingo Developments of Stuart, Inc.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 27th day of October, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-34061 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-66; Application No. D-1354]

Employee Benefit Plans; Exemption From the Prohibitions for Certain Transactions Involving Petroleum Marketers Equipment Co., Inc., Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit the sale of a parcel of real property by the Petroleum Marketers Equipment Company, Inc. Profit Sharing Plan (the Plan) to Mr. C. W. Boatwright, an employee of Petroleum Marketers Equipment Company, Inc. (the Employer), the Plan sponsor.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 31, 1979 notice was published in the Federal Register (44 FR 51379) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code, for the sale of real property by the Plan to Mr. Boatwright. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. No comments were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption effect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer

maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the sale by the Plan to C. W. Boatwright of a parcel of real property known as 2010 Exchange Avenue, Oklahoma City, Oklahoma, and legally described as Lots 3, 4, 5, 6, 7, and 8 in Block 14 in Stockyards Addition to Oklahoma City, Oklahoma, for the higher of $80,000 or the fair market value of the property at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 27th day of October 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-34002 Filed 11-5-79; 8:45 am]

BILLING CODE 4510-29-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 216
Tuesday, November 6, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-254, Amdt. 1; Nov. 1, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the November 7, 1979, meeting agenda.

TIME AND DATE: 2:30 p.m., November 7, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

7a. Docket 36613, Application of Hughes Airwest for an exemption so as to be able to operate nonstop between Boise and Reno effective October 28, 1979 (Memo 9219, BDA).

7b. Docket 34774, Petitions for reconsideration of Order 79-8-53 filed by the Texas Aeronautics Commission, the Chamber of Commerce of Lamar County, Texas, and the City of Paris, Texas, and the appeal to this order filed by Ponca City, Oklahoma (Memo 8060-G, BDA, OCCR).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 7a was deleted from the November 1, calendar so that the Members would have additional time to review the case and the Members have asked that it be placed on the November 7 calendar so there would be no further delay on this item. Item 7b is being added because the Board Members at the November 1, 1979 meeting decided that they would like additional time to discuss this item. Accordingly, the following Members have voted that Items 7a and 7b be added to the November 7, 1979 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2170-79 Filed 11-2-79; 3:29 pm]
BILLING CODE 6320-01-M

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[M-253, Amdt. 3; Nov. 1, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the November 1, 1979, meeting.

TIME AND DATE: 9:30 a.m., November 1, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 17. Docket 36613, Application of Hughes Airwest for an exemption so as to be able to operate nonstop between Boise and Reno effective October 28, 1979 (Memo 9219, BDA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 17 was deleted from the November 1, 1979 agenda in order to allow the Board Members additional time to review the case. Accordingly, the following Members have voted that Item 17 be deleted from the November 1, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2171-79 Filed 11-2-79; 3:29 pm]
BILLING CODE 6320-01-M

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[M-253, Amdt. 4; Nov. 1, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of items to the November 1, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., November 1, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

26. Dockets 32047 and 34798, Petition of Airlift International for reconsideration of Order 78-7-147 granting temporary all-cargo exemption authority to Conner Air Lines between Miami and various Caribbean and South American points; Application of Conner Air Lines for expansion of exemption authority granted by Order 78-7-147. (Memo #8087-A, BIA, OGC.)

29. Dockets 34861, 35930, 36543, 36666, and 36838; Applications of Braniff, Continental, Air Florida, Republic and Eastern for U.S.-Latin America exemptions. (Memo #9245, BIA, OGC, BLJ.)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Consideration of these applications will involve aspects of our relationships with virtually every country in Latin America, various points in the Caribbean and South America and our negotiations with many of them. Public disclosure of the opinions, evaluations, and strategies of the Board and its staff could seriously compromise the ability of the United States to further its aviation policies in Latin America. Accordingly, we believe that public observation of these items would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting on these items should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected To Attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David Kirstein, Mr. James L. Deegan, Mr. Daniel M. Kasper, and Mr. Stephen H. Lachter.
Managing Director.—Mr. Cressworth Lander.
Executive Assistant to the Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine and Mr. Steven A. Rothenberg.
Office of the General Counsel.—Ms. Mary Schuman, Mr. Gary Edles, Mr. Peter B. Schwarzkopf, and Mr. Michael Schopf.
Bureau of International Aviation.—Mr. Sanford Rederer, Mr. Ivars V. Mellups, Mr. Peter H. Rosenow, Mr. Jerome Nelson, Mr. Richard M. Loughlin, Mr. Robert Kneisley, Ms. Patricia DePuy, Mr. Vance Fort, Mr. Douglas Leister, Mr. Donald Litton, and Ms. Carolyn Coldren.
Bureau of Administrative Law Judges.—Judge Joseph Saunder.
Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Robert Preece.

Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Mr. John T. Golden.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to public observation.

Gary J. Edles,

Deputy General Counsel.

[S-2172-79 Filed 11-2-79; 3:29 pm]

BILLING CODE 6320-01-M

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October 31, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: November 7, 1979, 10 a.m.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—345th Meeting, November 7, 1979, Regular Meeting (10 a.m.)

CAP-1. Project No. 2871, Turlock Irrigation District.
CAP-2. Docket Nos. E-9002 and ER76-122, Commonwealth Edsion Co.
CAP-3. Docket No. ER76-285 (Phase II), Public Service Co. of New Hampshire.
CAP-4. Docket No. ER78-414, Delmarva Power & Light Co.
CAP-5. Docket No. ER79-435, Union Electric Co.
CAP-6. Docket No. EL78-29, Village of Penn Yan, New York.

Gas Agenda—345th Meeting, November 7, 1979, Regular Meeting

CAG-1. Docket No. OR78-1 Trans Alaska Pipeline System.
CAG-2. Docket No. RP71-107 (Phase II), Northern Natural Gas Co.
CAG-3. Docket No. RP72-122 (PGA 79-2), Colorado Interstate Gas Co.
CAG-4. Docket No. RP72-122 (PGA No. 80-1), Colorado Interstate Gas Co.
CAG-5. Docket No. RP72-121 (PGA No. 80-1), Southwest Gas Corp.
CAG-6. Docket Nos. RP72-142 and RP76-135, RP78-76 (PGA 79-2 and AP 79-21), Cities Service Gas Co.
CAG-7. Gas Rate Schedule No. 10 Pennzoil Co.
CAG-8. Docket No. CI79-637, Amoco Production Co., Docket No. CI75-38, Gulf Oil Corp., et al., Docket No. CI78-1149, Gulf Oil Corp., Docket No. CI78-1237, Gulf Oil Corp. (Successor to Kewanee Oil Co.), Docket No. CI78-162, Gulf Oil Corp., Docket No. CI79-551, Pogo Producing Co., Docket No. CI79-565, Pennzoil Oil and Gas Inc., Docket No. CI79-582, Pogo Producing Co., Docket No. CI79-549, Pioneer Production Co., Docket No. CS78-494, Cisco Drilling & Development Inc., et al., Docket No. CS71-912, et al., Cusack Interests c/o John Patrick Cusack, Jr. (J. P. Cusack), et al., Docket No. CS73-553, Phoenix Resources Co. (King Resources Co.), Docket No. CS79-440, Legg Resources, Ltd., Docket No. CS66-108, et al., Energy Resources Oil & Gas Corp. (Texam Oil Corp.), et al., Docket No. CI77-437, Phillips Petroleum Co., Docket No. CI79-615, Terra Resources, Inc., Docket No. CI79-152, Gulf Oil Corp., Docket No. CI79-154, Gulf Oil Corp., Docket No. CI79-291, Gulf Oil Corp.
CAG-9. Docket No. CI78-713, Champlin Petroleum Co.
CAG-10. Docket Nos. CP68-139 and CP79-175, Delhi Gas Pipeline Corp., Docket No. CP77-529, B-V Gas Gathering System, Inc.
CAG-11. Docket No. CP78-225, Consolidated Gas Supply Corp.
CAG-12. Docket No. CP79-336, Kentucky West Virginia Gas Co.
CAG-13. Docket No. CP76-76, Southern Natural Gas Co.
CAG-14. Docket No. CP79-394, Northern Natural Gas Co.
CAG-15. Docket No. CP78-459, Cities Service Gas Co.
CAG-16. Docket No. CP79-352, Tennessee Gas Pipeline Co., division of Tenneco Inc.
CAG-17. Docket No. CP79-390, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG-18. Docket No. CP78-99, Wyoming Interstate Natural Gas System. Docket No. CP78-122, Northwest Pipeline Corp. Docket No. CP78-178, Natural Gas Pipeline Co. of America. Docket No. CP78-206, El Paso Natural Gas Co.
CAG-19. Docket No. CP79-454, Transcontinental Gas Pipeline Corp.
CAG-20. Docket No. CP79-269, Northern Natural Gas Co. and Columbia Gulf Transmission Co. Docket No. CP79-442, Natural Gas Pipeline Co. of America.
CAG-21. Docket No. CP79-418, Tennessee Gas Pipeline Co., a division of Tenneco Inc.

Power Agenda—345th Meeting, November 7, 1979, Regular Meeting

I. Electric Rate Matters

ER-I. Docket No. EL79-27, *Municipal Wholesale Power Group* v. *Wisconsin Power & Light Company*

Miscellaneous Agenda—345th Meeting, November 7, 1979, Regular Meeting

M-1. Docket No. RM79-54, Small Power Production and Cogeneration Facilities—Qualifying Status.
M-2. Docket No. RM77-22, Rate of Interest on Amounts Held Subject to Refund.
M-3. Docket No. RM80-, Advance Payments.
M-4. Docket No. RM79-34, Transportation Certificates for Natural Gas for the Displacement of Fuel Oil.
M-5. Docket No. RM80-, Final Regulations Under Sectin 105 and 106(B) of the Natural Gas Policy Act of 1978.
M-6. Docket No. RM79-77, Rule Require Under Section 202 of the Natural Gas Policy Act of 1978.
M-7. Docket No. 79-66, Withdrawal of Notice of Determination.
M-8. Docket No. Well Category Determination.
M-9. Docket No. GP79-45, State of New Mexico Section 103 NGPA Determination Southland Royalty Co. Patterson "B" Com. #1 JO79-7078.
M-10. Docket No. GP79-46, State of Mississippi Section 108 NGPA Determination Gwinville GU 103-A, Well No. 1 JD No. 79-7438.
M-11. Docket No. GP79-47, State of Ohio Section 108 NGPA Determination Resource Exploration, Inc. Twelve Wells.
M-12. Docket No. Docket No. GP79-48, United States Geological Survey (New Mexico) Section 108 NGPA Determination, El Paso Natural Gas Co.
M-13. Docket No. GP79-48, United States Geological Survey (New Mexico) Section 108 NGPA Determination, Dugan Production Corp., Supran Energy Corp.
M-14. Docket No. GP79-53, State of Mississippi Section 108 Determination Applicant: Marathon Oil Co. Maxie Unit SE 31 #1-E JD79-9087.
M-15. Docket No. GP79-54, State of Colorado Section 103 NGPA Determination Beaver Mesa Exploration Co. Preston #31-18, JD79-8277.
M-16. Docket No. GP79-57, State of Mississippi Section 102 NGPA Determination Transcontinental Oil Corp. Three Wells JD79-9089, 9090 and 9091.
M-17. Docket No. GP79-58, U.S. Geological Survey (New Mexico), Section 108 NGPA Determination Dugan Production Corp., Rachel #2, JD79-8382 Jerome P. McHugh Jicarilla 28-3 #1, JD79-8197.
M-18. Docket No. RA78-1, Lundy Thagard Oil Co.

Gas Agenda—345th Meeting, November 7, 1979, Regular Meeting

I. Pipeline certificate matters

CP-1. Docket CP79-319, Consolidated Gas Supply Corp.

Kenneth F. Plumb,

Secretary.

[S-2165-79 Filed 11-2-79; 11:29 am]

BILLING CODE 6450-01-M

5

November 1, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., Thursday, November 8, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: items 1 and 2, open; Item 3 closed (Pursuant to 5 U.S.C. 552(c)(10)).

MATTERS TO BE CONSIDERED:

1. Mid-Continent Coal and Coke Co., DENV 79–29–P (Petition for Discretionary Review.)
2. Stash Brothers, Inc., PITT 79–44–P.
3. Disciplinary Proceeding, D 79–3.

CONTACT PERSON FOR MORE INFO: Jean Ellen, 202–653–5632.

[S–2168–79 Filed 11–2–79; 2:43 pm]

BILLING CODE 6820–12–M

6

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m., Friday, November 9, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 1, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–2166–79 Filed 11–2–79; 11:47 am]

BILLING CODE 6210–01–M

7

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATIONS OF PREVIOUS ANNOUNCEMENTS: 44 FR 61727 (Oct. 26, 1979) and 44 FR 73002 (Nov. 1, 1979).

PREVIOUSLY ANNOUNCED TIMES AND DATES OF THE MEETINGS: 10 a.m., Monday, November 5, 1979, and 2:30 p.m., Thursday, November 8, 1979.

CHANGES IN THE MEETING: Changes in the scheduling of agenda items as follows:

A. Delete Item No. 5 [Marine radar from the United Kingdon [Inv. AA1921–210—briefing and vote] and add the following item to the agenda for Monday, November 5, 1979;

5. Titanium dioxide from Belgium, France, the United Kingdom, and the Federal Republic of Germany (Inv. AA1921–206, –207, –208, and –209)—briefing and vote.

B. Add to the agenda for Thursday, November 8, 1979, item No. 5 from the agenda for November 5, 1979, as follows:

3. Marine radar from the United Kingdom (Inv. AA1921–210)—briefing and vote.

Commissioners Parker, Alberger, Moore, Bedell, and Stern determined by unanimous consent that Commission business requires rescheduling of the agenda items and affirmed that no earlier announcement of the changes to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–2167–79 Filed 11–2–79; 2:43 pm]

BILLING CODE 7020–02–M

8

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., November 7, 1979.

PLACE: 2025 M Street NW, Washington, D.C., 4th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility lending rates.
2. Amendment to Part 720 of 12 C.F.R.—regulations on security.
3. Applications for charters, amendments to charters, bylaw amendments, mergers, conversions and insurance as may be pending at that time.

RECESS: 10:30 a.m.

TIME AND DATE: 11 a.m., November 7, 1979.

PLACE: 2025 M Street NW, Washington, D.C., 4th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel Actions. Closed pursuant to exemptions (2) and (6).
2. Contract for purchase of computer equipment. Closed pursuant to exemptions (4) and (9)(B).
3. Review of Fiscal year 1980 operating plan (including staffing and budget). Closed pursuant to exemption (9)(B).
4. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act in order to prevent their closing. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Administrative Actions. Closed pursuant to exemptions (8), (9) (A)(ii), and (10).
6. Insurance applications of state chartered credit unions. Closed pursuant to exemptions (8) and (9)(A)(ii).
7. Merger applications. Closed pursuant to exemptions (8) and (9)(A)(ii).
8. Consideration of a credit union's request to make a special charge to its regular reserves. Closed pursuant to exemptions (8) and (9)(A)(ii).
9. Consideration of a credit union's request for recission of an Order to Establish Special Reserve for Losses. Closed pursuant to exemptions (8) and (9)(A)(ii).

CONTACT PERSON FOR MORE INFORMATION: Rosemary Brady, Secretary of the Board, telephone (202) 254–9800.

[S–2164–79 Filed 11–2–79; 9:16 am]

BILLING CODE 7535–01–M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Thursday, November 8, 1979.

PLACE: Commissioners' Conference Room 1717 H St., NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

November 8, 1979, 9:30 a.m.

1. Briefing by IE on TMI Lessons Learned (approximately 1½ hours, public meeting), rescheduled from November 1.
2. Affirmation Session (approximately 10 minutes, public meeting), items are tentative: a. Kranish FOIA Appeal (79–A–6C).

November 8, 1979, 1:30 p.m.

1. Briefing on TMI Lessons Learned Report (approximate 2 hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Roger M. Tweed,

Office of the Secretary.

[S–2169–79 Filed 11–2–79; 2:55 pm]

BILLING CODE 7590–01–M

Federal Register

Tuesday
November 6, 1979

Part II

Environmental Protection Agency

Implementation of Procedures on the National Environmental Policy Act

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 6

[FRL 1315-6]

Implementation of Procedures on the National Environmental Policy Act

AGENCY: Environmental Protection Agency (EPA)

ACTION: Rule.

SUMMARY: On November 29, 1978, the Council on Environmental Quality (CEQ) promulgated Regulations establishing uniform procedures for implementing the procedural provisions of the National Environmental Policy Act. CEQ required Federal agencies to adopt appropriate procedures to supplement their Regulations. As a result, EPA has amended its procedures contained in 40 CFR Part 6 to take into account this initiative.

DATES: These regulations will be effective on December 15, 1979.

ADDRESSES: Comments submitted on the regulations may be inspected at the Public Information Referrence Unit, EPA Headquarters, Room 2922, Waterside Mall, 401 M Street, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Thomas Sheckells, Office of Environmental Review (A-104), EPA, 401 M Street, S.W., Washington, D.C. 20460; telephone 202/755-0790.

SUPPLEMENTARY INFORMATION:

Introduction

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991, and the Council on Environmental Quality (CEQ) Regulations (40 CFR Sections 1500-1508) requires that all agencies of the Federal Government to the fullest extent possible carry out the provisions of NEPA by building into agency decision-making appropriate and careful consideration of the environmental effects of proposed actions, and avoiding or minimizing the adverse effects of these actions. The environmental impact statement (EIS) requirement under section 102(2)(C) serves as the most significant mechanism for implementing NEPA. These regulations set forth the requirements for EPA to carry out its obligations under NEPA.

Proposed regulations were published in the Federal Register on June 18, 1979 (44 FR 35158).

In view of the President's directive to CEQ to establish a single set of regulations for government-wide NEPA implementation, CEQ has directed the Federal agencies to avoid restating or paraphrasing the CEQ Regulations, even though agencies may quote or cross-reference the CEQ regulations in their implementing procedures. Therefore, it must be made clear the following regulations shall be read with the understanding that the reader has available the policy statements and definitions contained in the CEQ Regulations. In this respect, it is noted that previous nomenclature used by EPA has been adjusted to conform with the CEQ regulations. The document entitled "environmental assessment" as previously used by EPA is now referred to as an "environmental information document"; the document entitled "negative declaration" is now a "finding of no significant impact"; and the document entitled "environmental impact appraisal" is now "environmental assessment."

These regulations amend EPA regulations under 40 CFR Part 6 previously promulgated in Subparts A-H on April 14, 1975 (see 40 FR 16823) and Subpart I on January 11, 1977 (see 42 FR 2450).

Exemptions

Over the past several years there has been much controversy surrounding this Agency's preparation of EISs. Considering the nature of EPA's activities is generally concerning actions protective of the environment, the Congress and the Courts have seen fit to exempt numerous EPA activities from EIS applicability.

The Congress has provided major exemptions under the Clean Water Act and the Clean Air Act. Specifically, under section 511(c)(1) of the Clean Water Act (CWA) (PL 92-500), EPA is exempt from preparing EISs under the CWA except for the issuance of new source National Pollutant Discharge Elimination System (NPDES) permits as authorized under section 402 and the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works under section 201. Under Section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (PL 93-319), all activities under the Clean Air Act are exempt from the EIS requirements of NEPA. Further, the courts have found EPA to be exempt from the EIS requirements for regulatory actions under the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Marine Protection, Research and Sanctuaries Act, because major EPA actions under these statutes are undertaken with sufficient safeguards to ensure performance of a functionally equivalent analysis of NEPA's EIS requirements. See *EDF* v. *EPA*, 489 F2d 1247 (D.C. Circuit, 1973); *Wyoming* v. *Hathaway*, 525 F2d 66 (Tenth Circuit, 1975); *Maryland* v. *Train*, 415 F. Supp. 116 (District Court, Maryland, 1976). In addition, the Agency has determined that EPA regulatory activities under the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act of 1976, the Safe Drinking Water Act, and the Noise Control Act are exempt from the EIS requirements of NEPA. Nevertheless, on May 7, 1974, Administrator Russell Train decided that the Agency would voluntarily prepare EISs on certain regulatory activities in spite of the statutory and court exemptions that existed at that time. This revised regulation does not affect those voluntary EIS procedures.

Summary of Regulation

The regulations set forth below are intended to meet the requirements for Federal agency procedures under § 1507.3 of the CEQ Regulations.

Subparts A through I describe procedures for preparing required EISs. Subparts E through I establish those classes of action and create specific criteria for preparing environmental assessments and EISs pursuant to § 1507.3(b)(2) of the CEQ Regulations. Also, numerous categorical exemptions have been created over and above those exemptions referred to above. Specifically, Subpart E relates to environmental review procedures for the Wastewater Treatment Construction Grants Program of the CWA; Subpart F relates to environmental review procedures for the new source NPDES permit program; Subpart G relates to environmental review procedures for research and development programs; Subpart H relates to environmental review procedures for solid waste demonstration projects; and Subpart I relates to environmental review procedures for EPA undertakings for construction of special purpose facilities or facility renovations. Subpart C relates to integrating the requirements of other environmental laws with the environmental review procedures set forth in subparts E through I. It is emphasized that subpart C simply provides a recitation of these other environmental laws. Detailed procedures for compliance with these laws are set forth in regulations promulgated by the responsible agency, i.e., Advisory Council on Historic Preservation regulations dated January

30, 1979, or EPA procedures implementing these laws, i.e., EPA's Statement of Procedures on Floodplain Management and Wetlands Protection dated January 5, 1979.

Regarding EPA's Statement of Procedures on Floodplain Management and Wetlands Protection, there has been some confusion as to the effective date of this interim Statement of Procedures. As described under section 7.a, further EPA program amendments implementing the Statement of Procedures were required by July 5, 1979. This was intended to be the effective date of this Statement of Procedures. In order to emphasize the importance of this Statement of Procedures, it has been made a part of this Regulation as Appendix A.

Application to Ongoing Construction Grant Activities

Applicants for wastewater treatment construction grants currently face a tremendous number of policies and regulations with which they must comply. Each time new requirements are imposed, grantees are faced with a situation that can require them to duplicate work that already has been completed. This duplication causes undue delay in the grants process and causes both delay and increased costs in water pollution control efforts. Although these regulations impose very few, new, substantive requirements, lack of phasing could cause administrative delays. To avoid this problem and to alleviate any possible burden on grantees and their consultants, § 6.102(c)(2) provides for phasing these regulations in the construction grants program.

This regulation replaces EPA's previous NEPA regulation dated April, 1975. The regulation, however, contains primarily procedural changes and few substantive changes; the regulation consolidates those policies and procedures that have been imposed since EPA's previous NEPA regulations were promulgated, as well as implementing the CEQ Regulations which were effective on July 30, 1979.

Under these circumstances, this regulation is intended to require compliance with new administrative procedures effective December 15, 1979. These procedures are those that are primarily the responsibility of EPA and include procedures such as review time for findings of no significant impact, environmental assessment and EIS format changes, etc.

No new substantive requirements will be imposed on grantees that are well along in the planning process. These grantees will be allowed to complete their environmental information documents under policies and regulations already applicable to their projects. If a case should arise in which EPA determines that environmental documents submitted by a grantee fail to comply with any new substantive requirement under this regulation it will be the responsibility of EPA to supplement this information. It should be emphasized, however, that any lack of environmental documentation required under previously applicable procedures will still be the responsibility of the grantee.

All facility plans submitted after September 30, 1980 must comply with this regulation. This allows a nine month phase in period which permits grantees progressing in a timely manner to complete environmental review procedures under existing procedures.

Response to Comments on Proposed Regulations

EPA received 39 comment letters on the proposed regulations. As a result of external and internal input numerous technical changes were made to improve the regulation. The following is the response to the substantive comments made on the regulation:

1. *Request for comment period extension and public hearing on the proposed regulation.* Several commenters requested an extension of the comment period beyond the July 18, 1979 (or 30-day) limit. Upon individual request, EPA considered comments submitted as late as August 2, 1979. However, because of the time constraints imposed by the CEQ Regulations' effective date of July 30, 1979, the comment period could not be extended any further. More importantly, we believe that the issues presented by these proponents for a time extension and a public hearing were given a thorough airing during the development of the CEQ Regulations which evolved with substantial government, industry, and citizen interaction between June, 1977 and November, 1978. Three specific issues that were raised include:

a. Limiting construction activities on a project until the environmental review process is completed; see item 5 below for further discussion.

b. Conditioning or denying new source NPDES permits based on other than water quality considerations; see item 5 below for further discussion.

c. Assuring there is no conflict of interest or financial stake in the outcome of the project by the contractor preparing the EIS under EPA's "third party" EIS preparation method; see § 1506.5(c) of the CEQ Regulations (also, see item 6 below).

Considering the CEQ Regulations are already in effect, we believe that an appropriate comment period was created for this regulation.

2. *Establishing the need for mandatory public hearings when an EIS is prepared.* In the proposed regulation, we solicited comments on conducting mandatory public hearings attendant to a draft EIS. The response was about even. The CEQ Regulations under § 1506.6 do not require mandatory public hearings. However, EPA's public participation regulations pertaining to "Grants for Construction of Treatment Works" under 40 CFR Part 35, Subpart E, require grant applicants to undertake a Full-scale Public Participation Program whenever an EIS is required. This includes the conduct of two public meetings and one mandatory hearing during the developing of the facilities plan; the hearing is encouraged to be held in conjunction with the public hearing on the draft EIS (see 40 CFR § 35.917-5(c)(3)(viii)). EPA prepares most of its EISs on construction grant projects. Additionally, there is the view that because an EIS is generated in most cases on controversial projects, members of the local community should have the opportunity to hear testimony on the necessity of the project and personally to make comments. Therefore, we have concluded that mandatory hearings shall be conducted within 45 days after the issuance of a draft EIS; see § 6.400(c).

3. *Providing substantial exemptions for EPA programs from the application of NEPA requirements.* The "Exemptions" provision set forth above spells out the numerous statutory, court ordered and EPA interpreted exemptions from NEPA. Several commenters suggested that the scope of EPA's NEPA exemptions is overly broad. While taking philosophical exception to EPA's statutory and judicial exemptions, the commenters suggest that there continues to remain a duty for EPA to prepare some form of an "environmental assessment" for related actions; further it was suggested that EISs be prepared for actions which are not environmentally protective regulations, particularly where EPA's action is potentially environmentally detrimental or highly controversial. We continue to maintain that we are exempt from the requirements of NEPA except as set forth under subparts A through I of this regulation. This view is supported by a legal opinion dated March 22, 1979 on the application of the EIS requirements to the regulatory actions taken under the Resource Conservation and Recovery Act of 1976. It is further

supported by a legal opinion dated May 7, 1979 on the application of section 102(2)(E) of NEPA to NPDES permitting activities for either new dischargers or existing sources.

4. *Assuring inclusion, monitoring, and enforcement of mitigation measures in grants.* In the proposed regulation, we solicited comments on the question of whether third parties (e.g., citizens) should be able to file lawsuits to enforce compliance with grant conditions. Generally, opposition has been expressed to this concept. However, these regulations under § 6.509 entitled "Identification of mitigation measures" have been bolstered to recognize the affirmative duty of the responsible official to assure that effective mitigation measures identified in a finding of no significant impact (FNSI) or EIS are implemented by the grantee. Further, explicit monitoring and enforcement measures are set forth under § 6.510. However, the absence of an explicit third party enforcement role in these regulations does not limit citizen enforcement authority under NEPA and the CEQ Regulations.

5. *Imposing substantive conditions on new source NPDES permitting.* Several commenters expressed concern about EPA's position that NEPA requires us to impose substantive conditions on the new source NPDES permitting process. As mentioned in item 1 above, the two major issues raised by commenters relate to limiting construction activities on a project until the environmental process is completed and conditioning or denying NPDES permits based on factors identified during the NEPA process. These issues were recently considered in the June 7, 1979 promulgation of the revised NPDES Regulations (see 44 FR 32854). That Regulation is preceded by a discussion explaining EPA's basis for setting the requirements at issue (see 44 FR 32871–32872). With regard to the preconstruction activities issue, today's rulemaking cross-references the NPDES Regulations under 40 CFR 122.47(c) (see § 6.603). However, the mitigation and monitoring requirements contained in the proposed NEPA regulations are retained in today's promulgation to clarify how the results of the NEPA process are to be made effective (see §§ 6.606(b) and 6.607).

6. *Using third party EIS preparation method for new source NPDES permitting.* Several commenters raised several issues pertaining to the third party method for preparing new source EISs. This is the method whereby the applicant, aware in the early planning stages of his project of the need for an EIS, contracts directly with a consulting firm to prepare the EIS. This forecloses the need for other preliminary environmental documents (i.e., an environmental information document or environmental assessment); however, EPA must select the consultant, ensure the consultant has no conflict of interest, and oversee the preparation of the EIS (see § 6.604(g)(3)).

This method of EIS preparation created such interest on the part of some commenters that they requested a public hearing just on this issue (see comment 1 above). We determined that there was not sufficient basis for a hearing for the following reasons: Several commenters who raised this issue expressed concern over an alleged mandatory use of this method for new source EIS preparation; however, it is clear, as was set forth in the proposed regulation and now in § 6.603(g) of this regulation, that the third party method is discretionary, and is one of three methods which may be used by EPA to prepare new source EISs. A major concern raised by commenters was over the conflict of interest limitations imposed on the third party contractor. This is a primary concern to engineering consulting firm parent companies involved in performing engineering work for the applicant who desire to see their subsidiary, an environmental consulting firm, to be used as the third party contractor. This practice is generally prohibited under the EPA rules (see § 6.604(g)(3)(ii)). This standard concerning limitations on conflict of interest, as well as full disclosure pertaining to the contractor's stake in the outcome of the project has been imposed under § 1506.5(c) of the CEQ Regulations; EPA fully supports this provision in principle. We believe that the objectivity standard that EPA has always imposed in selecting a third party contractor supports the primary NEPA concepts of full and complete disclosure in an objective way and assurance of the integrity of the environmental review process. Several commenters also noted the total exclusion of the applicant in EPA's selecting the third party contractor. Although EPA must select the contractor, a provision has been added under § 6.604(g)(3)(i) giving the applicant a consultation role in the choosing of the contractor.

7. *Deleting express reference to the adoption method for preparing construction grant EISs.* In the proposed regulation, EPA included a provision for preparing wastewater treatment construction grant EISs by a method whereby the grantee's facilities plan and NEPA-related information, to the extent they adequately addressed relevant environmental issues, and after independent EPA evaluation, could be adopted to satisfy the requirement for an EIS. Several commenters suggested that this method of EIS preparation contravened the intent of Subpart E for the identification of the need for preparation of EISs early in the facilities planning process. For instance, under the joint EIS process method (see § 6.507(h)(3)), the EIS is prepared in parallel with the facilities plan. Therefore, this adoption provision has been deleted. Nevertheless, it should be made clear that although we are discouraging use of the adoption approach, we recognize that situations may arise which require reliance on this method, which would be permissible under Subpart E.

8. *Conformity to state implementation plans.* In the proposed regulation we proposed a course of action to ensure the conformity of EPA actions to the provisions of each state air quality implementation plan (SIP) pursuant to the requirements of section 176(c) of the Clean Air Act, as amended in 1977. Subpart C of the final regulation sets forth the requirements, revised in response to public comments, for EPA to carry out its obligations under section 176(c).

The Agency intends that the responsible EPA official will consult with State and local agencies during the preparation of the environmental assessment to obtain a recommendation as to the conformity of the proposed EPA action to the SIP. Section 6.303 of the regulation has been specifically revised to require the responsible EPA official to provide a written assurance in the FNSI or draft EIS that the proposed EPA action conforms with the SIP. The final regulation now provides that the opportunity for State concurrence or nonconcurrence with EPA's conformity determination will occur during the FNSI or draft EIS review time periods.

Some comments on the proposed § 6.303(c) requested clarification of the extent to which the Agency will delay a proposed action when it has determined that the action will not be in conformity with the SIP. Accordingly, § 6.303 has been revised to provide for an explicit Agency response to any notification of State nonconcurrence with the EPA conformity determination. If EPA finds that the State nonconcurrence is unjustified, then an explanation of this finding will be included in the final FNSI or final EIS.

However, if EPA finds that the State nonconcurrence is warranted, then the Agency intends that the proposed action

will not receive final approval until it has been brought into conformity with the SIP. Achieving conformity may necessitate modifications to proposed actions implemented by EPA or actions implemented by others, but subject to EPA approval. In some instances, the State may wish to revise its SIP to account for the proposed action. When the Agency has been notified of and agrees with the State nonconcurrence, the final FNSI or final EIS will detail the measures that will need to be taken, prior to final EPA approval, to assure conformity with the SIP.

Dated: October 29, 1979.

Note.—EPA has determined that because this document does not constitute a significant regulation within the meaning of Executive Order 12044, preparation of a regulatory analysis is not required.

Douglas M. Costle,

Administrator.

Accordingly, 40 CFR Part 6 is revised in its entirety to read as follows:

PART 6—IMPLEMENTATION OF PROCEDURES ON THE NATIONAL ENVIRONMENTAL POLICY ACT

Authority: Secs. 101, 102, and 103 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); also, the Council on Environmental Quality Regulations dated November 29, 1978 (40 CFR Part 1500).

Subpart A—General

§ 6.100 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991 and the Council on Environmental Quality (CEQ) Regulations of November 29, 1978 (43 FR 55978) requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality as much as possible. The Environmental Protection Agency (EPA) shall integrate these NEPA factors as early in the Agency planning processes as possible. The environmental review process shall be the focal point to assure NEPA considerations are taken into account. To the extent applicable, EPA shall prepare environmental impact statements (EISs) on those major actions determined to have significant impact on the quality of the human environment. This part takes into account the EIS exemptions set forth under section 511(c)(1) of the Clean Water Act (Pub. L. 92-500) and section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

(b) This part establishes EPA policy and procedures for the identification and analysis of the environmental impacts of EPA-related activities and the preparation and processing of EISs.

§ 6.101 Definitions.

(a) *Terminology.* All terminology used in this part will be consistent with the terms as defined in 40 CFR Part 1508 (the CEQ Regulations). Any qualifications will be provided in the definitions set forth in each subpart of this regulation.

(b) The term "CEQ Regulations" means the regulations issued by the Council on Environmental Quality on November 29, 1978 (see 43 FR 55978), which implement Executive Order 11991. The CEQ Regulations will often be referred to throughout this regulation by reference to 40 CFR Part 1500 *et al.*

(c) The term "environmental review" means the process whereby an evaluation is undertaken by EPA to determine whether a proposed Agency action may have a significant impact on the environment and therefore require the preparation of the EIS.

(d) The term "environmental information document" means any written analysis prepared by an applicant, grantee or contractor describing the environmental impacts of a proposed action. This document will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described in the remaining subparts of this regulation.

(e) The term "grant" as used in this part means an award of funds or other assistance by a written grant agreement

or cooperative agreement under 40 CFR Chapter I, Subpart B.

§ 6.102 Applicability.

(a) *Administrative actions covered.* This part applies to the activities of EPA in accordance with the outline of the subparts set forth below. Each subpart describes the detailed environmental review procedures required for each action.

(1) Subpart A sets forth an overview of the regulation. Section 6.102(b) describes the requirements for EPA legislative proposals.

(2) Subpart B describes the requirements for the content of an EIS prepared pursuant to subparts E, F, G, H, and I.

(3) Subpart C describes the requirements for coordination of all environmental laws during the environmental review undertaken pursuant to Subparts E, F, G, H, and I.

(4) Subpart D describes the public information requirements which must be undertaken in conjunction with the environmental review requirements under Subparts E, F, G, H, and I.

(5) Subpart E describes the environmental review requirements for the wastewater treatment construction grants program under Title II of the Clean Water Act.

(6) Subpart F describes the environmental review requirements for new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act.

(7) Subpart G describes the environmental review requirements for research and development programs undertaken by the Agency.

(8) Subpart H describes the environmental review requirements for solid waste demonstration projects undertaken by the Agency.

(9) Subpart I describes the environmental review requirements for construction of special purpose facilities and facility renovations by the Agency.

(b) *Legislative proposals.* As required by the CEQ Regulations, legislative EISs are required for any legislative proposal developed by EPA which significantly affects the quality of the human environment. A preliminary draft EIS shall be prepared by the responsible EPA office concurrently with the development of the legislative proposal and contain information required under subpart B. The EIS shall be processed in accordance with the requirements set forth under 40 CFR 1506.8.

(c) *Application to ongoing activities—*(1) *General.* The effective date for these regulations is December 5, 1979. These regulations do not apply to an EIS or supplement to that EIS if the draft EIS was filed with the Office of Environmental Review (OER) before July 30, 1979. No completed environmental documents need be redone by reason of these regulations.

(2) With regard to activities under Subpart E, these regulations shall apply to all EPA environmental review procedures effective December 15, 1979. However, for facility plans begun before December 15, 1979, the responsible official shall impose no new requirements on the grantee. Such grantees shall comply with requirements applicable before the effective date of this regulation. Notwithstanding the above, this regulation shall apply to any facility plan submitted to EPA after September 30, 1980.

§ 6.103 Responsibilities.

(a) *General responsibilities.* (1) The responsible official's duties include:

(i) Requiring applicants, contractors, and grantees to submit environmental information documents and related documents and assuring that environmental reviews are conducted on proposed EPA projects at the earliest possible point in EPA's decision-making process. In this regard, the responsible official shall assure the early involvement and availability of information for private applicants and other non-Federal entities requiring EPA approvals.

(ii) When required, assuring that adequate draft EISs are prepared and distributed at the earliest possible point in EPA's decision-making process, their internal and external review is coordinated, and final EISs are prepared and distributed.

(iii) When an EIS is not prepared, assuring that findings of no significant impact (FNSIs) and environmental assessments are prepared and distributed for those actions requiring them.

(1) *The responsible official's duties include:*

(i) Requiring applicants, contractors, and grantees to submit environmental information documents and related documents and assuring that environmental reviews are conducted on proposed EPA projects at the earliest possible point in EPA's decision-making process. In this regard, the responsible official shall assure the early involvement and availability of information for private applicants and other non-Federal entities requiring EPA approvals.

(ii) When required, assuring that adequate draft EISs are prepared and distributed at the earliest possible point in EPA's decision-making process, their internal and external review is coordinated, and final EISs are prepared and distributed.

(iii) When an EIS is not prepared, assuring that findings of no significant impact (FNSIs) and environmental assessments are prepared and distributed for those actions requiring them.

(iv) Consulting with appropriate officials responsible for other environmental laws set forth in Subpart C.

(v) Consulting with the Office of Environmental Review (OER) on actions involving unresolved conflicts concerning this part or other Federal agencies.

(vi) When required, assuring that public participation requirements are met.

(2) *Office of Environmental Review duties include:*

(i) Supporting the Administrator in providing EPA policy guidance and assuring that EPA offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of the EPA effort to comply with this part.

(iii) Providing assistance to responsible officials as required, i.e., preparing guidelines describing the scope of environmental information required by private applicants relating to their proposed actions.

(iv) Coordinating the training of personnel involved in the review and preparation of EISs and other associated documents.

(v) Acting as EPA liaison with the Council on Environmental Quality and other Federal and State entities on matters of EPA policy and administrative mechanisms to facilitate external review of EISs, to determine lead agency and to improve the uniformity of the NEPA procedures of Federal agencies.

(vi) Advising the Administrator and Deputy Administrator on projects which involve more than one EPA office, are highly controversial, are nationally significant, or "pioneer" EPA policy, when these projects have had or should have an EIS prepared on them.

(vii) Carrying out administrative duties relating to maintaining status of EISs within EPA, i.e., publication of notices of intent in the Federal Register and making available to the public status reports on EISs and other elements of the environmental review process.

(3) *Office of an Assistant Administrator duties include:*

(i) Providing specific policy guidance to their respective offices and assuring

that those offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of their respective office's efforts to comply with this part.

(iii) Acting as liaison between their offices and the OER and between their offices and other Assistant Administrators or Regional Administrators on matters of agencywide policy and procedures.

(iv) Advising the Administrator and Deputy Administrator through the OER on projects or activities within their respective areas of responsibilities which involve more than one EPA office, are highly controversial, are nationally significant, or "pioneer" EPA policy, when these projects will have or should have an EIS prepared on them.

(v) Pursuant to § 6.102(b) of this subpart, preparing legislative EISs as appropriate on EPA legislative initiatives.

(4) The Office of Planning and Evaluation shall be responsible for coordinating the preparation of EISs required on EPA legislative proposals (see § 6.102(b)).

(b) *Responsibilities for Subpart E*—(1) *Responsible official.* The responsible official for EPA actions covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Office of the Assistant Administrator, as described in § 6.103(a)(3) shall be assumed by the Assistant Administrator for Water and Waste Management for EPA actions covered by this subpart.

(c) *Responsibilities for Subpart F.* (1) *Responsible official.* The responsible official for activities covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the assistant Administrator, as described in section 6.103(a)(3) shall be assumed by the Assistant Administrator for Enforcement for EPA actions covered by this subpart.

(d) *Responsibilities for Subpart G.* The Assistant Administrator for Research and Development will be the responsible official for activities covered by this subpart.

(e) *Responsibilities for Subpart H.* The Deputy Assistant Administrator for Solid Waste will be the responsible official for activities covered by this subpart.

(f) *Responsibilities for Subpart I.* (1) *Responsible official.* The responsible official for new construction and modification of special purpose facilities is as follows:

(i) The Chief, Facilities Management Branch, Facilities and Support Services Division, Office of Management and Agency Services, shall be the responsible official on all new construction of special purpose facilities and on all improvement and modification projects for which the Facilities Management branch has received a funding allowance.

(ii) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

(iii) The Center Directors shall be the responsible officials on all improvement and modification projects for which the National Environmental Research Centers have received the funding allowance.

§ 6.104 Early involvement of private parties.

As required by 40 CFR 1501.2(d) and § 6.103(a)(3)(v) of this regulation, responsible officials must ensure early involvement of private applicants or other non-Federal entities in the environmental review process related to EPA grant and permit actions set forth under Subparts E, F, G, and H. The responsible official in conjunction with OER shall:

(a) Prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(b) Provide such guidance on a project-by-project basis to any applicant seeking assistance.

(c) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

§ 6.105 Synopsis of EIS procedures.

(a) *Responsible offical.* The responsible official shall utilize a systematic, interdisciplinary approach to integrate natural and social sciences as well as environmental design arts in planning programs and making decisions which are subject to environmental review. The respective staffs may be supplemented by professionals from other agencies (see 40 CFR § 1501.6) or consultants whenever in-house capabilities are insufficiently interdisciplinary.

(b) *Environmental information documents.* Environmental information documents must be prepared by applicants, grantees, or permittees and submitted to EPA as required in Subparts E, F, G, H, and I. The environmental information document will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described under § 6.105(d) below and Subparts E through I.

(c) *Environmental reviews.* Environmental reviews shall be conducted on the EPA activities outlined in § 6.102 above and set forth under Subparts E, F, G, H and I. This process shall consist of a study of the action to identify and evaluate the related environmental impacts. The process shall include a review of any related environmental information document to determine whether any significant impacts are anticipated and whether any changes can be made in the proposed action to eliminate significant adverse impacts; when an EIS is required, EPA has overall responsibility for this review, although grantees, applicants, permittees or contractors will contribute to the review through submission of environmental information documents.

(d) *Environmental assessments.* Environmental assessments (i.e., concise public documents for which EPA is responsible) are prepared to provide sufficient data and analysis to determine whether an EIS or finding of no significant impact is required. Where EPA determines that an EIS will be prepared, there is no need to prepare a formal environmental assessment.

(e) *Notice of intent and EISs.* When the environmental review indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the Federal Register, scoping shall be undertaken in accordance with 40 CFR § 1501.7, and a draft EIS shall be prepared and distributed. After external coordination and evaluation of the comments received, a final EIS shall be prepared and disseminated. The final EIS shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(f) *Finding of no significant impact* (FNSI). When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The environmental assessment shall be included as a part of the FNSI. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(g) *Record of decision.* At the time of its decision on any action for which a final EIS has been prepared, the

responsible official shall prepare a concise public record of the decision. The record of decision shall describe those mitigation measures to be undertaken which will make the selected alternative environmentally acceptable. Where the final EIS recommends the alternative which is ultimately chosen by the responsible official, the record of decision may be extracted from the executive summary to the final EIS.

(h) *Monitoring.* The responsible official shall provide for monitoring to assure that decisions on any action where a final EIS has been prepared are properly implemented. Appropriate mitigation measures shall be included in actions undertaken by EPA.

§ 6.106 Deviations.

(a) *General.* The Director, OER, is authorized to approve deviations from these regulations. Deviation approvals shall be made in writing by the Director, OER.

(b) *Requirements.* (1) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the substantive provisions of these regulations or the CEQ Regulations, the responsible official shall notify the Director, OER, before taking such action. The responsible official shall consider to the extent possible alternative arrangements; such arrangements will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. The Director, OER, after consulting CEQ, will inform the responsible official, as expeditiously as possible of the disposition of his request.

(2) Where circumstances make it necessary to take action without observing procedural provisions of these regulations, the responsible official shall notify the Director, OER, before taking such action. If the Director, OER, determines such a deviation would be in the best interest of the Government, he shall inform the responsible official, as soon as possible, of his approval.

(3) The Director, OER, shall coordinate his action on a deviation under § 6.106(b) (1) or (2) above with the Director, Grants Administration Division, Office of Planning and Management, for any required grant-related deviation under 40 CFR 30.1000, as well as the appropriate Assistant Administrator.

Subpart B—Content of EISs

§ 6.200 The environmental impact statement.

Preparers of EISs must conform with the requirements of 40 CFR Part 1502 in writing EISs.

§ 6.201 Format.

The format used for EISs shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

(a) Cover sheet;
(b) Executive Summary;
(c) Table of contents;
(d) Purpose of and need for action;
(e) Alternatives including proposed action;
(f) Affected environment;
(g) Environmental consequences of the alternatives;
(h) Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);
(i) List of preparers;
(j) Index (commensurate with complexity of EIS);
(k) Appendices.

§ 6.202 Executive summary.

The executive summary shall describe in sufficient detail (10–15 pages) the critical facets of the EIS so that the reader can become familiar with the proposed project or action and its net effects. The executive summary shall focus on:

(a) The existing problem;
(b) A brief description of each alternative evaluated (including the preferred and no action alternatives) along with a listing of the environmental impacts, possible mitigation measures relating to each alternative, and any areas of controversy (including issues raised by governmental agencies and the public); and
(c) Any major conclusions.

A comprehensive summary may be prepared in instances where the EIS is unusually long in nature. In accordance with 40 CFR 1502.19, the comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any Federal, State and local agencies who have EIS review responsibilities and also shall be made available to other interested parties upon request.

§ 6.203 Body of EIS.

(a) *Purpose and need.* The EIS shall clearly specify the underlying purpose and need to which EPA is responding. If the action is a request for a permit or a grant, the EIS shall clearly specify the goals and objectives of the applicant.

(b) *Alternatives including the proposed action.* In addition to 40 CFR 1502.14, the EIS shall discuss:

(1) *Alternatives considered by the Applicant.* This section shall include a *balanced* description of each alternative considered by the applicant. These discussions shall include size and location of facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules. The alternative of no action shall be discussed and the applicant's preferred alternative(s) shall be identified. For alternatives which were eliminated from detailed study, a brief discussion of the reasons for their having been eliminated shall be included.

(2) *Alternatives available to EPA.* EPA alternatives to be discussed shall include: (i) Taking an action; or (ii) taking an action on a modified or alternative project, including an action not considered by the applicant; and (iii) denying the action.

(3) *Alternatives available to other permitting agencies.* When preparing a joint EIS, and if applicable, the alternatives available to other Federal and/or State agencies shall be discussed.

(4) *Identifying preferred alternative.* In the final EIS, the responsible official shall signify the preferred alternative.

(c) *Affected environment and environmental consequences of the alternatives.* The affected environment on which the evaluation of each alternative shall be based includes for example hydrology, geology, air quality, noise, biology, socioeconomics, energy, land use, and archeology/history. These subject matters shall be adapted to analyze each alternative within a project area. The discussion shall be structured so as to present the impacts of each alternative under each subject heading for easy comparison by the reader. The "no action" alternative should be described first so that the reader may relate the other alternatives to beneficial and adverse impacts related to the applicant doing nothing. Description of environmental setting for the purpose of necessary background shall be included in this discussion of the impacts of the "no action" alternative. The amount of detail in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

(d) *Coordination.* The EIS shall include: (1) The objections and suggestions made by local, State, and Federal agencies before and during the EIS review process must be given full consideration, along with the issues of public concern expressed by individual citizens and interested environmental groups. The EIS must include discussions of any such comments concerning our actions, and the author of each comment should be identified. If a comment has resulted in a change in the project or the EIS, the impact statement should explain the reason.

(2) Public participation through public hearings or scoping meetings shall also be included. If a public hearing has been held prior to the publication of the EIS, a summary of the transcript should be included in this section. For the public hearing which shall be held after the publication of the draft EIS, the date, time, place, and purpose shall be included here.

(3) In the final EIS, a summary of the coordination process and EPA responses to comments on the draft EIS shall be included.

§ 6.204 Incorporation by reference.

In addition to 40 CFR 1502.21, material incorporated into an EIS by reference shall be organized to the extent possible into a Supplemental Information Document and be made available for review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the period allowed for comment.

§ 6.205 List of preparers.

When the EIS is prepared by contract, either under direct contract to EPA or through an applicant's or grantee's contractor, the responsible official must independently evaluate the EIS prior to its approval and take responsibility for its scope and contents. The EPA officials who undertake this evaluation shall also be described under the list of preparers.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

§ 6.300 General.

Various Federal laws and executive orders address specific environmental concerns. The responsible official shall integrate to the greatest practicable extent the applicable procedures in this subpart during the implementation of the environmental review process under subparts E through I. This subpart presents the central requirements of these laws and executive orders. It refers to the pertinent authority and regulations or guidance that contain the procedures. These laws and executive orders establish review procedures independent of NEPA requirements. The responsible official shall be familiar with any other EPA or appropriate agency procedures implementing these laws and executive orders.

§ 6.301 Historical and archeological sites.

EPA is subject to the requirements of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and Executive Order 11593, entitled "Protection and Enhancement of the Cultural Environment." These provisions and regulations establish review procedures independent of NEPA requirements.

(a) Under section 106 of the National Historic Preservation Act and Executive Order 11593, if an EPA undertaking affects any property with historic, architectural, archeological or cultural value that is listed on or eligible for listing on the National Register of Historic Places, the responsible official shall comply with the procedures for consultation and comment promulgated by the Advisory Council on Historic Preservation in 36 CFR Part 800. The responsible official must identify properties affected by the undertaking that are potentially eligible for listing on the National Register and shall request a determination of eligibility from the Keeper of the National Register, Department of the Interior, under the procedures in 36 CFR Part 63.

(b) Under the Archaeological and Historic Preservation Act, if an EPA activity may cause irreparable loss or destruction of significant scientific, prehistoric, historic or archeological data, the responsible official or the Secretary of the Interior is authorized to undertake data recovery and preservation activities. Applicable procedures are found in 36 CFR Parts 64 and 66.

§ 6.302 Wetlands, floodplains, agricultural lands, coastal zones, wild and scenic rivers, fish and wildlife and endangered species.

The following procedures shall apply to EPA administrative actions in programs to which the pertinent statute or executive order applies.

(a) *Wetlands protection.* Executive Order 11990, Protection of Wetlands, requires Federal agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979, incorporated as Appendix A hereto) requires EPA programs to determine if proposed actions will be in or will affect wetlands. If so, the responsible official shall prepare a floodplains/wetlands assessment, which will be part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative to the action exists.

(b) *Floodplain management.* Executive Order 11988, Floodplain Management, requires Federal agencies to evaluate the potential effects of actions they may take in a floodplain to avoid, to the extent possible, adverse effects associated with direct and indirect development of a floodplain. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979, incorporated as Appendix A hereto), requires EPA programs to determine whether an action will be located in or will affect a floodplain. If so, the responsible official shall prepare a floodplain/wetlands assessment. The assessment will become part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative exists.

(c) *Agricultural lands.* It is EPA's policy to consider the protection of the Nation's environmentally significant agricultural lands from irreversible conversion to uses which result in its loss as an environmental or essential food production resource. Before undertaking an action, the responsible official shall determine whether there are significant agricultural lands in the planning area. If significant agricultural lands are identified, direct and indirect effects of the undertaking on the land shall be evaluated and adverse effects avoided or mitigated, to the extent possible, in accordance with EPA's Policy to Protect Environmentally Significant Agricultural Lands (September 8, 1978).

(d) *Coastal zone management.* The Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*, requires that all Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. If an EPA action may affect a coastal zone area, the responsible official shall assess the impact of the action on the coastal zone. If the action significantly affects the coastal zone area and the State has an

approved coastal zone management program, a consistency determination shall be sought in accordance with procedures promulgated by the Office of Coastal Zone Management in 15 CFR 930.

(e) *Wild and scenic rivers.* Under the Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.*, a Federal agency may not assist, through grant, loan, license or otherwise, the construction of a water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of approval of the Wild and Scenic Rivers Act. The responsible officical shall determine whether there are any designated rivers in the planning area. The responsible official shall not recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, in request of appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of Interior or the Secretary of Agriculture, as the case may be, in writing of his intention at least sixty days in advance, and without specifically reporting to the Congress in writing at the time he makes his recommendation or request in what respect construction of such project would be in conflict with the purposes of the Wild and Scenic Rivers Act and would affect the component and the values to be protected by him under the Act. Applicable consultation procedures are found in section 7 of the Act.

(f) *Fish and wildlife protection.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, requires Federal agencies involved in actions that will result in the control or structural modification of any natural stream or body of water for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action. The responsible official shall consult with the Fish and Wildlife Service and the appropriate State agency to ascertain the means and measures necessary to mitigate, prevent and compensate for project-related losses of wildlife resources and to enhance the resources. Reports and recommendations of wildlife agencies should be incorporated into the environmental assessment or environmental impact statement. Consultation procedures are detailed in 16 U.S.C. 662.

(g) *Endangered species protection.* Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, Federal agencies are prohibited from jeopardizing threatened or endangered species or adversely modifying habitats essential to their survival. The responsible official shall identify all designated endangered or threatened species or their habitat that may be affected by an EPA action. If listed species or their habitat may be affected, formal consultation must be undertaken with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. If the consultation reveals that the EPA activity may jeopardize a listed species or habitat, mitigation measures should be considered. Applicable consultation procedures are found in 50 CFR 402.

§ 6.303 Air quality.

(a) The Clean Air Act, as amended in 1977, 42 U.S.C. 7476(c), requires all Federal projects, licenses, permits, plans, and financial assistance activities to conform to any State Air Quality Implementation Plan (SIP) approved or promulgated under section 110 of the Act. For proposed EPA actions that may significantly affect air quality, the responsible official shall assess the extent of the direct or indirect increases in emissions and the resultant change in air quality.

(b) If the proposed action may have a significant direct or indirect adverse effect on air quality, the responsible official shall consult with the appropriate State and local agencies as to the conformity of the proposed action with the SIP. Such agencies shall include the State agency with primary responsibility for the SIP, the agency designated under section 174 of the Clean Air Act and, where appropriate, the metropolitan planning organization (MPO). This consultation should include a request for a recommendation as to the conformity of the proposed action with the SIP.

(c) The responsible official shall provide an assurance in the FNSI or the draft EIS that the proposed action conforms with the SIP.

(d) The assurance of conformity shall be based on a determination of the following:

(1) The proposed action will be in compliance with all applicable Federal and State air pollution emission limitations and standards;

(2) The direct and indirect air pollution emissions resulting from the proposed action have been expressly quantified in the emissions growth allowance of the SIP; or if a case-by-case offset approach is included in the SIP, that offsets have been obtained for the proposed action's air quality impacts;

(3) The proposed action conforms to the SIP's provisions for demonstrating reasonable further progress toward attainment of the national ambient air quality standards by the required date;

(4) The proposed action complies with all other provisions and requirements of the SIP.

(e) During the 30-day FNSI and 45-day draft EIS review time periods EPA shall provide an opportunity for the State agency with primary responsibility for the SIP to concur or nonconcur with the determination of conformity. All State notifications of concurrence or nonconcurrence with the EPA conformity determination shall include a record of consultation with the appropriate section 174 agency and, where different, the MPO. There shall be a presumption of State concurrence if no objection is received by EPA during the review time period.

(f) The responsible official shall provide in the FNSI or the final EIS a response to a notification of state nonconcurrence with the EPA conformity determination. This response shall include the basis by which the conformity of the proposed action to the SIP will be assured. If the responsible official finds that the State nonconcurrence with the EPA conformity determination is unjustified, then an explanation of this finding shall be included in the FNSI or the final EIS.

Subpart D—Public and Other Federal Agency Involvement

§ 6.400 Public involvement.

(a) *General.* EPA shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and EPA policies on public participation. The responsibile official shall ensure that public notice is provided for in accordance with 40 CFR § 1506.6(b) and shall ensure that public involvement is carried out in accordance with EPA Public Participation Regulations, 40 CFR Part 25, and other applicable EPA public participation procedures.

(b) *Publication of notices of intent.* As soon as practicable after his decision to prepare an EIS and before the scoping process, the responsible official shall

send the notice of intent to interested and affected members of the public and shall request the OER to publish the notice of intent in the Federal Register. The responsible official shall send to OER the signed original notice of intent for Federal Register publication purposes. The scoping process should be initiated as soon as practicable in accordance with the requirements of 40 CFR § 1501.7. Participants in the scoping process shall be kept informed of substantial changes which evolve during the EIS drafting process.

(c) *Public meetings or hearings.* Public meetings or hearings shall be conducted consistent with Agency program requirements. There shall be a presumption that a scoping meeting will be conducted whenever a notice of intent has been published. The responsible official shall conduct a public hearing on a draft EIS. The responsible official shall ensure that the draft EIS is made available to the public at least 30 days in advance of the hearing.

(d) *Findings of no significant impact.* The responsible official shall allow for sufficient public review of a FNSI before it becomes final. The FNSI and attendant publication must state that interested persons disagreeing with the decision may submit comments to EPA. The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The responsible official shall consider fully comments submitted before taking administrative action. The FNSI shall be made available to the public in accordance with the requirements of 40 CFR § 1506.6. One copy shall be submitted to OER.

(e) *Record of decision.* The responsible official shall disseminate the record of decision to those parties which commented on the draft or final EIS. One copy shall be submitted to OER.

§ 6.401 Official filing requirements.

(a) *General.* OER is responsible for the conduct of the official filing system for EISs. This system was established as a central repository for all EISs which serves not only as means of advising the public of the availability of each EIS but provides a uniform method for the computation of minimum time periods for the review of EISs. OER publishes a weekly notice in the Federal Register listing all EISs received during a given week. The 45-day and 30-day review periods for draft and final EISs, respectively, are computed from the Friday following a given reporting week. Pursuant to 40 CFR § 1506.9, responsible officials shall comply with the guidelines established by OER on the conduct of the filing system.

(b) *Minimum time periods.* No decision on EPA actions shall be made until the later of the following dates: (1) Ninety (90) days after the date established in § 6.401(a) above from which the draft EIS review time period is computed.

(2) Thirty (30) days after the date established in § 6.401(a) above from which the final EIS review time period is computed.

(c) *Filing of EISs.* All EISs, including supplements, must be officially filed with OER. Responsible officials shall transmit each EIS in five (5) copies to the Director, Office of Environmental Review, EIS Filing Section (A-104). OER will provide CEQ with one copy of each EIS filed. No EIS will be officially filed by OER unless the EIS has been made available to the public. OER will not accept unbound copies of EISs for filing.

(d) *Extensions or waivers.* The responsible official may independently extend review periods. In such cases, the responsible official shall notify OER as soon as possible so that adequate notice may be published in the weekly Federal Register report. OER upon a showing of compelling reasons of national policy may reduce the prescribed review periods. Also, OER upon a showing by any other Federal agency of compelling reasons of national policy may extend prescribed review periods, but only after consultation with the responsible official. If the responsible official does not concur with the extension of time, OER may not extend a prescribed review period more than 30 days beyond the minimum prescribed review period.

(e) *Rescission of filed EISs.* The responsible official shall file EISs with OER at the same time they are transmitted to commenting agencies and made available to the public. The responsible official is required to reproduce an adequate supply of EISs to satisfy these distribution requirements prior to filing an EIS. If the EIS is not made available, OER will consider retraction of the EIS or revision of the prescribed review periods based on the circumstances.

§ 6.402 Availability of documents.

(a) *General.* The responsible official will ensure sufficient copies of the EIS are distributed to interested and affected members of the public and are made available for further public distribution. EISs, comments received, and any underlying documents should be available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. section 552(b)), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed actions. To the extent practicable, materials made available to the public shall be provided without charge; otherwise, a fee may be imposed which is not more than the actual cost of reproducing copies required to be sent to another Federal agency.

(b) *Public information.* Lists of all notices of intent, EISs, FNSIs, and records of decision prepared by EPA shall be maintained by OER for the public. Each responsible official will maintain a similar monthly status report for all environmental documents prepared. In addition, OER will make available for public inspection copies of EPA EISs; the responsible official shall do the same for any prepared EIS.

§ 6.403 The commenting process.

(a) *Inviting comments.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, other governmental entities and the public in accordance with 40 CFR § 1503.1.

(b) *Response to comments.* The responsible official shall respond to comments in the final EIS in accordance with 40 CFR § 1503.4.

§ 6.404 Supplements.

(a) *General.* The responsible official shall consider preparing supplements to draft and final EISs in accordance with 40 CFR § 1502.9(c). A supplement shall be prepared, circulated and filed in the same fashion (exclusive of scoping) as draft and final EISs.

(b) *Alternative procedures.* In the case where the responsible official wants to deviate from existing procedures, OER shall be consulted. OER shall consult with CEQ on any alternative arrangements.

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

§ 6.500 Purpose.

This subpart amplifies the procedures described in Subparts A through D with detailed environmental review procedures for the wastewater treatment works construction grants program under Title II of the Clean Water Act.

§ 6.501 Definitions.

(a) "Step 1 grant" means grant assistance for a project for preparation

of a facilities plan as described in 40 CFR 35.930–1(a)(1).

(b) "Step 2 grant" means grant assistance for a project for preparation of construction drawings and specifications as described in 40 CFR 35.930–1(a)(2).

(c) "Step 3 grant" means grant assistance for a project for erection and building of a publicly owned treatment works as described in 40 CFR 35.930–1(a)(3).

(d) "Step 2 plus step 3 grant" means grant assistance for a project which combines the grants set forth in section 6.501 (b) and (c) above as described in 40 CFR 35.930–1(a)(4).

(e) "Applicant" means any individual, agency, or entity which has filed an application for grant assistance under 40 CFR Part 35.

(f) "Grantee" means any individual, agency, or entity which has been awarded assistance under 40 CFR 35.930–1.

§ 6.502 Applicability.

(a) *Administrative actions covered.* This subpart applies to the administrative actions listed below (except as provided in § 6.502(c) below):

(1) Approval of a facilities plan; and

(2) Award of grant assistance for a project involving step 2 or step 3 when the responsible official determines that a significant change has occurred in the project or its impact from that described in the facilities plan.

(b) *Administrative actions excluded.* The actions listed below are not subject to the requirements of this subpart:

(1) Approval of State priority lists;

(2) Award of a step 1 grant;

(3) Approval or award of a section 208 planning grant;

(4) Award of grant assistance for a step 2 or step 3 project unless the responsible official determines that a significant change has occurred in the project or its impact from that described in the facilities plan (see § 6.502(a)(2) above);

(5) Approval of issuing an invitation for bids or awarding a construction contract;

(6) Actual physical commencement of building construction;

(7) Award of a section 206 grant for reimbursement;

(8) Award of a grant increase unless the responsible official determines that a significant change has occurred in a project or its impact as described in the approved facilities plan; and

(9) Awards of training assistance under section 109(b) of the Clean Water Act;

(10) Approval of user charge system or industrial cost recovery system.

§ 6.503 Consultation during the environmental review process.

When there are overriding considerations of cost or impaired program effectiveness, the responsible official may award a step 2 or step 3 grant for a discrete segment of the project plans or construction before the environmental review is completed. The project segment must be noncontroversial, necessary to correct water quality or other immediate environmental problems and cannot, by its completion, foreclose any reasonable options being considered in the environmental review. The remaining portion of the project shall be evaluated to determine if an EIS is required. In applying the criteria for this determination, the entire project shall be considered, including those parts permitted to proceed. In no case may these types of grant assistance for step 2 or step 3 projects be awarded unless both the OER and CEQ have been consulted, a FNSI has been issued on the segments permitted to proceed at least 30 days prior to grant award, and the grant award contains a specific agreement prohibiting action on the segment of planning or construction for which the environmental review is not complete. The Director, OER, is responsible for consulting with CEQ and the Assistant Administrator for Water and Waste Management.

§ 6.504 Public participation.

(a) *General.* It is EPA policy that optimum public participation be achieved during the environmental review process as deemed appropriate by the responsible official under 40 CFR Part 25 and implementing provisions of Part 35, Subpart E of this Chapter. Compliance with Part 25 and implementing provisions constitutes compliance with public participation requirements under this part.

(b) *Full-scale public participation.* In accordance with 40 CFR 35.917–5(c), the responsible official shall assure that a full-scale public participation program shall be undertaken where EPA prepares or requires the preparation of an EIS during the facility planning process. If the need for an EIS is identified late in the facility planning process, the responsible official shall determine on an individual project basis what elements are necessary to ensure full-scale public participation.

(c) Public participation activities undertaken in connection with the environmental review process should be coordinated with the facility planning public participation program wherever possible.

(d) The responsible official may institute such additional NEPA-related public participation procedures as he deems necessary during the environmental review process.

§ 6.505 Limitations on actions during environmental review process.

No administrative action under § 6.502(a) shall be taken until the environmental review process has been completed except as provided under § 6.502(c) above. The responsible official shall ensure compliance in accordance with 40 CFR § 1506.1 and subparts A, C, and D of this regulation, and all policies, guidance and regulations adopted to implement the requirements under 42 U.S.C. 7616 of the Clean Air Act.

§ 6.506 Criteria for preparing EISs.

(a) The responsible official shall assure that an EIS will be issued when he determines that any of the following conditions exists:

(1) The treatment works will induce significant changes (either absolute changes or increases in the rate of change) in industrial, commercial, agricultural, or residential land use concentrations or distributions. Factors that should be considered in determining if these changes are significant include but are not limited to: (i) The vacant land subject to increased development pressure as a result of the treatment works; (ii) the increases in population which may be induced; (iii) the faster rate of change of population; changes in population density; (iv) the potential for overloading sewage treatment works; (v) the extent to which landowners may benefit from the areas subject to increased development; (vi) the nature of land use regulations in the affected area and their potential effects on development; (vii) and deleterious changes in the availability or demand for energy.

(2) The treatment works or collector system will have significant adverse effects on wetlands, including indirect effects, or any major part of the treatment works will be located on wetlands.

(3) The treatment works or collector system will significantly affect a habitat identified on the Department of the Interior's or a State's threatened and endangered species lists, or the treatment works will be located on the habitat.

(4) Implementation of the treatment works or plan may directly cause or induce changes that significantly:

(i) Displace population;

(ii) Alter the character of an existing residential area;

(iii) Adversely affect a floodplain; or

(iv) Adversely affect significant amounts of prime or unique agricultural land, or agricultural operations on this land as defined in EPA's Policy to Protect Environmentally Significant Agricultural Land.

(5) The treatment works will have significant adverse direct or indirect effects on parklands, other public lands or areas of recognized scenic, recreational, archeological, or historic value.

(6) The treatment works may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(7) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses.

(b) When the treatment works shall threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment, the responsible official shall consider preparing an EIS.

(c) When full-scale public participation is required under 40 CFR 35.917–5(c), the responsible official shall consider preparing an EIS.

§ 6.507 Environmental review process.

Consistent with 40 CFR 1501.2, EPA shall integrate the environmental review process throughout the construction grants program facilities planning process (Step 1). Critical decisionmaking points and the scope of review recommended include:

(a) *Award of a facilities planning grant (Step 1).* Prior to award of Step 1 assistance, or within no more than 30 days thereafter, EPA may review, or request that the State review, if the facilities plan review is delegated under section 205(g) of the Clean Water Act, the existence of environmentally sensitive areas in the facilities planning area. This review is intended to be brief and concise drawing on existing information and knowledge of EPA, State agencies, regional planning agencies, areawide water quality management agencies, and grantees. This review may be used to determine the scope of the environmental information document prepared by the grantee. It may also be used to make an early determination of the need for an EIS. Whenever possible, this initial review should be discussed at the first conference held with the potential grantee.

(b) *Mid-course reviews.* A review of environmental information developed by the grantee should be conducted to the extent practicable whenever meetings are held to assess the progress of facilities plan development. These meetings should be held after completion and submission to EPA and the State of the majority of the environmental information document and before a preferred alternative is selected. When the program is delegated, the state shall forward to EPA the required preliminary environmental assessment to enable EPA to make decisions with respect to the need for an EIS. Although the decision whether to prepare an EIS must be made before a facilities plan can be approved, a decision to prepare an EIS is encouraged earlier during the facilities planning process. Following any mid-course review meeting, EPA should inform interested parties as to the following:

(1) The preliminary nature of the agency's position on preparing an EIS;

(2) The relationship between the facilities planning and environmental review processes;

(3) The desirability of further public input; and

(4) A contact person for further information.

(c) *Review of completed facilities plan.* EPA, or the State when the program is delegated, shall review any completed facilities plan with particular attention to the environmental information document and its utilization in the development of alternatives and the selection of a preferred alternative. An adequate environmental information document should be an integral part of any facilities plan submitted to EPA or to a State. The environmental information document shall be of sufficient scope to enable the responsible official to prepare an environmental assessment. For those States where the review of facilities plans has been delegated, State personnel will be required to prepare a preliminary environmental assessment which serves as an adequate basis for EPA's decision to issue an FNSI or an EIS. The environmental assessment shall cover all potentially significant environmental impacts and related factors. Each of the following subjects shall be critically reviewed to identify potentially significant environmental concerns and shall be addressed in the environmental assessment.

(1) *Description of the existing environment.* For the delineated facilities planning area, the existing environmental conditions relevant to the analysis of alternatives or determinations of the environmental impacts (especially indirect) of the proposed action shall be considered. The description may include those environmental factors potentially affected by the alternatives under consideration, such as: surface and groundwater quality; water supply and use; general hydrology; air quality; noise levels, energy production and consumption; land use trends including probable development of regional shopping centers; population projections; wetlands, floodplains, coastal zones, prime agricultural lands, and other environmentally sensitive areas; historic and archeological sites; other related Federal or State projects in the area; plant and animal communities which may be affected, especially those containing threatened or endangered species.

(2) *Description of the future environment without the project.* The relevant future environmental conditions shall be described. The no action alternative must be adequately evaluated.

(3) *Purpose and need.* This should include a summary discussion and demonstration of the need for wastewater treatment in the facilities planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.

(4) *Documentation.* Sources of information used to describe the existing environment and to assess future environmental impacts should be clearly referenced. These sources should include regional, State and Federal agencies with responsibility or interest in the types of impacts listed in § 6.506(a)(1) above and in Subpart C.

(5) *Evaluation of Alternatives.* This discussion shall include a comparative analysis of feasible alternatives (including the no action alternative) throughout the study area. The alternatives shall be screened with respect to capital and operating costs; significant direct and indirect environmental effects; physical, legal or institutional constraints; and compliance with regulatory requirements. Special attention should be given to long term impacts, irreversible impacts and induced impacts such as development. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider when relevant to the project:

(i) Flow and waste reduction measures, including infiltration/inflow reduction;

(ii) Appropriate water conservation measures;

(iii) Alternative locations, capacities, and construction phasing of facilities;

(iv) Alternative waste management techniques, including treatment and discharge, wastewater reuse, land application, and individual systems;

(v) Alternative methods for management of sludge, other residual materials, including utilization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer.

(vi) Improving effluent quality through more efficient operation and maintenance;

(vii) Appropriate energy reduction measures;

(viii) Multiple use, including recreation and education.

(6) *Environmental consequences.* Relevant direct and indirect impacts of the proposed action shall be considered, giving special attention to unavoidable impacts, steps to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity. The significance of land use impacts shall be considered, based on the analysis required under Appendix A to 40 CFR Part 35, Subpart E. Any specific land use controls (including grant conditions and areawide waste treatment management plan requirements) should be identified and referenced. In addition to these items, the responsible official may require that other analyses and data, which are needed to satisfy environmental review requirements, be included with the facilities plan. Such requirements should be discussed during initial conferences with potential grantees or mid-course review meetings. The responsible official also may require submission of supplementary information either before or after award of grant assistance for a step 2 project or before a step 3 project if needed for compliance with environmental review requirements. Requests for supplementary information shall be made in writing.

(7) Steps to minimize adverse effects. (i) This section shall describe structural and nonstructural measures, if any, in the facilities plan, or additional measures identified during the review, to mitigate or eliminate significant adverse effects on the human and natural environments. Structural provisions include changes in facility design, size, and location; non-structural provisions include staging facilities as well as developing and enforcing land use regulations and environmental protection regulations.

(ii) The Responsible official shall not award step 2 or step 3 grant assistance if the grantee has not made, or agreed to make, pertinent changes in the project, in accordance with determinations made in a FNSI or EIS. He shall condition a grant to ensure that the grantee will comply, or seek to obtain compliance, with such environmental review determinations.

(d) *Environmental review.* The environmental review shall apply the criteria under § 6.506 above. This review shall be conducted by the responsible official and based on any of the following:

(1) A complete facilities plan and the environmental information document, whenever review of facilities plan has not been delegated;

(2) A complete facilities plan, the applicant's environmental information document and the preliminary environmental assessment prepared by the State, for a State which has been delegated authority for facilities plan review; or

(3) Other documentation, deemed necessary by the responsible official or submitted by a State with delegated review authority, adequate to make an EIS determination by EPA. Where EPA determines that an EIS is to be prepared, there is no need to prepare a formal environmental assessment.

If deficiencies exist in the environmental information document, preliminary environmental assessment, or other supporting documentation, they may be identified by EPA and necessary corrections shall be made before the facilities plan is approved.

(e) *Finding of No Significant Impact.* If, after completion of the environmental review, a determination is made that an EIS will not be required, the responsible official shall prepare and distribute a FNSI in accordance with § 6.104 and subpart D of this Chapter. The FNSI will be based on EPA's independent review and environmental assessment finalized by EPA which will either be incorporated into or attached to the FNSI. The FNSI shall list any mitigation measures necessary to eliminate significant adverse environmental effects and make the recommended alternative environmentally acceptable. Once a FNSI and environmental assessment have been prepared for the facilities plan for a certain area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official has determined that the project has changed significantly from that described in the facilities plan.

(f) *Notice of intent.* If, after completion of the environmental review, or subsequent to any of the steps described in § 6.507 (a), (b), or (c) above, a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent in accordance with § 6.104 and subpart D.

(g) *Scoping.* As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected Federal, State and local agencies, the grantee and other interested parties (e.g. Advisory Group members under 40 CFR 25.7) to determine the scope of the EIS. A notice of this scoping meeting will meet the requirements of subpart D. As part of the scoping meeting EPA will as a minimum:

(1) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(2) Identify those issues which are not significant;

(3) Determine what information is needed from cooperating agencies or other parties;

(4) Discuss the method for EIS preparation and the public participation strategy;

(5) Identify consultation requirements of other environmental laws, in accordance with subpart C; and

(6) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(h) *EIS method.* EPA shall prepare the EIS by any one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a joint EIS process, whereby the grantee contracts directly with a qualified consulting firm. In this case the draft EIS serves the purpose of and satisfies the requirement for an environmental information document. In this instance, the following selection requirements shall be fulfilled:

(i) A Memorandum of Understanding shall be developed between EPA, the grantee, and where possible, the State, outlining the responsibilities of each party and their relationship to the EIS consultant.

(ii) EPA shall approve evaluation criteria to be used in the consultant selection process.

(iii) EPA shall review and approve the selection process.

(iv) EPA shall approve the consultant selected for EIS preparation.

(v) The detailed Scope of Work prepared by the EIS consultant must be approved by EPA.

(vi) The EIS consultant shall execute a disclosure statement prepared by EPA indicating that the consultant has no financial or other interest in the outcome of the project.

§ 6.508 Limits on delegation to States.

(a) *General.* In cases where the authority for facilities plan review has been delegated to the State under section 205(g) of the Clean Water Act, EPA shall, as a minimum, retain the following responsibilities:

(1) The determination of whether or not to prepare an EIS shall be solely that of EPA. EPA may consider a State's recommendation, but the ultimate decision under NEPA shall not be delegated.

(2) Findings of no significant impact and the environmental assessment shall be approved, finalized and issued by EPA.

(3) Notices of intent shall be prepared and issued by EPA.

(b) *Elimination of duplication.* The responsible official shall assure that maximum efforts are undertaken to minimize duplication within the limits described under §§ 6.506 and 6.507(a) above. In carrying out requirements under this subpart, maximum consideration should be given to eliminating duplication in accordance with 40 CFR § 1506.2, where there are State or local procedures comparable to NEPA, and entering into Memoranda of Understanding with a State concerning workload distribution and responsibilities for implementing the facilities planning process.

§ 6.509 Identification of mitigation measures.

(a) *Record of decision.* When a final EIS has been issued, the responsible offical shall prepare a record of decision in accordance with 40 CFR 1505.2 prior to the approval of the facilities plan. The record of decision shall include identification of mitigation measures derived from the EIS process which are necessary to make the recommended alternative environmentally acceptable.

(b) *Specific mitigation measures.* Prior to the award of step 2 or step 3 grant assistance, the responsible official must ensure that effective mitigation measures identified in the FNSI, final EIS, or record of decision are implemented by the grantee. This should be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or agreeing to conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document to assure that the applicant possesses the authority to fulfill the conditions.

§ 6.510 Monitoring.

(a) *General.* The responsible official shall ensure there is adequate monitoring of mitigation measures and other grant conditions which are identified in the FNSI, final EIS, and record of decision.

(b) *Enforcement.* The responsible official may consider taking the following actions consistent with 40 CFR 35.965 if the grantee fails to comply with grant conditions:

(1) Terminating or annulling the grant;

(2) Disallowing project costs related to noncompliance;

(3) Withholding project payments;

(4) Suspending work;

(5) Finding the grantee to be nonresponsible or ineligible for future Federal assistance or for approval for future contract awards under EPA grants;

(6) Seeking an injunction against the grantee; or

(7) Instituting such other administrative or judicial action as may be legally available and appropriate.

Subpart F—Environmental Review Procedures for the New Source NPDES Program

§ 6.600 Purpose.

(a) *General.* This subpart provides procedures for carrying out the environmental review process for the issuance of new source National Pollutant Discharge Elimination System (NPDES) discharge permits authorized under section 306, section 402, and section 511(c)(1) of the Clean Water Act.

(b) *Permit regulations.* All references in this subpart to the "permit regulations" shall mean Parts 122, 124, and 125 of Title 40 of the Code of Federal Regulations relating to the NPDES program.

§ 6.601 Definitions.

(a) The term "administrative action" for the sake of this subpart means the issuance by EPA of an NPDES permit to discharge as a new source, pursuant to 40 CFR 124.61.

(b) The term "applicant" for the sake of this subpart means any person who applies to EPA for the issuance of an NPDES permit to discharge as a new source.

§ 6.602 Applicability.

(a) *General.* The procedures set forth under subparts A, B, C and D, and this subpart shall apply to the issuance of new source NPDES permits, except for the issuance of a new source NPDES permit from any State which has an approved NPDES program in accordance with section 402(b) of the Clean Water Act.

(b) *New source determination.* An NPDES permittee must be determined a "new source" before these procedures apply. New source determinations will be undertaken pursuant to the provisions of the permit regulations under 40 CFR 122.47 (a) and (b) and 124.12.

§ 6.603 Limitations on actions during environmental review process.

The processing and review of an applicant's NPDES permit application shall proceed concurrently with the procedures within this subpart. Actions undertaken by the applicant or EPA shall be performed consistent with the requirements of 40 CFR 122.47(c).

§ 6.604 Environmental review process.

(a) *New source.* If EPA's initial determination under § 6.602(b) is that the facility is a new source, the responsible official shall evaluate any environmental information to determine if any significant impacts are anticipated and an EIS is necessary. If the permit applicant requests, the responsible official shall establish time limits for the completion of the environmental review process consistent with 40 CFR 1501.8.

(b) *Information needs.* Information necessary for a proper environmental review shall be provided by the permit applicant in an environmental information document. The responsible official shall consult with the applicant to determine the scope of an environmental information document. In doing this the responsible official shall consider the size of the new source and the extent to which the applicant is capable of providing the required information. The responsible official shall not require the applicant to gather data or perform analyses which unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The responsible official shall keep requests for data to the minimum consistent with his responsibilities under NEPA.

(c) *Environmental assessment.* The responsible official shall prepare a written environmental assessment based on an environmental review of either the environmental information document and/or any other available environmental information.

(d) *EIS determination.* (1) When the environmental review indicates that a significant environmental impact may occur and that the significant adverse

impacts cannot be eliminated by making changes in the proposed new source project, a notice of intent shall be issued, and a draft EIS prepared and distributed. When the environmental review indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts, a FNSI shall be issued which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with section 6.400(d) of this regulation.

(e) *Lead agency.* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project. The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set forth in 40 CFR 1501.5.

(2) If, after the meeting of involved agencies, EPA has been determined to be the lead agency, the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency, the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Notice of intent.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the notice of intent in the Federal Register, distribute the notice of intent and arrange and conduct a scoping meeting as outlined in 40 CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, pursuant to § 6.604(g)(3) below, the responsible official shall insure that a notice of intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(g) *EIS method.* EPA shall prepare EISs by one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a third party method, whereby the responsible official enters into a "third party agreement" for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such an agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's environmental information document and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract.

(ii) Select the consultant based on his ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project.

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

(h) *Documents for the administrative record.* Pursuant to 40 CFR §§ 124.35(a)(7) and 124.122 any environmental assessment, FNSI, EIS, or supplement to an EIS shall be made a part of the administrative record related to permit issuance.

§ 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each separate decision to issue an NPDES permit shall then be based on the information in this areawide EIS. Site specific EISs may be required in certain circumstances in addition to the areawide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: the nature and extent of the vacant land subject to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on development and the environment; and the changes in the availability or demand for energy and the resulting environmental consequences.

(2) The new source will directly, or through induced development, have significant adverse effect upon local ambient air quality, local ambient noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(3) Any major part of the new source will have significant adverse effect on the habitat of threatened or endangered species on the Department of the Interior's or a State's lists of threatened and endangered species.

(4) The environmental impact of the issuance of a new source NPDES permit will have significant direct and adverse effect on a property listed in or eligible for listing in the National Register of Historic Places.

(5) Any major part of the source will have significant adverse effects on parklands, wetlands, wild and scenic rivers, reservoirs or other important bodies of water, navigation projects, or agricultural lands.

§ 6.606 Record of decision.

(a) *General.* At the time of permit award, the responsible official shall prepare a record of decision in those cases where a final EIS was issued in accordance with 40 CFR 1505.2 and pursuant to the provisions of the permit regulations under 40 CFR 124.61 and 124.122. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Mitigation measures.* The mitigation measures derived from the EIS process shall be incorporated as conditions of the permit; ancillary agreements shall not be used to require mitigation.

§ 6.607 Monitoring.

In accordance with 40 CFR 1505.3 and pursuant to 40 CFR 122.47(c) and 122.17, the responsible official shall ensure that there is adequate monitoring of compliance with all NEPA related requirements contained in the permit.

Subpart G—Environmental Review Procedures for Research and Development Programs

§ 6.700 Purpose.

This subpart amplifies the requirements described in subparts A through D by providing more specific environmental review procedures on research and development programs undertaken by the Office of Research and Development (ORD).

§ 6.701 Definition.

The term "appropriate program official" means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural programs under the purview of ORD.

§ 6.703 Criteria for preparing EISs.

(a) The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions under § 6.506(a) (1) through (6) and (8) exist and when:

(1) The project consists of field tests involving the introduction of significant quantities of toxic or polluting agricultural chemicals, animal wastes, pesticides, radioactive materials or other hazardous substances into the environment by ORD, its grantees or its contractors;

(2) The action may involve the introduction of species or subspecies not indigenous to an area;

(3) There is a high probability of an action ultimately being implemented on a large scale, and this implementation may result in significant environmental impacts; or

(4) The project involves commitment to a new technology which is significant and may restrict future viable alternatives;

(b) An EIS will not usually be needed when:

(1) The project is conducted completely within any laboratory or other facility, and external environmental effects have been eliminated by methods for disposal of laboratory wastes and safeguards to prevent hazardous materials entering the environment accidentally; or

(2) The project is a relatively small experiment or investigation that is part of a non-Federally funded activity of the private sector, and it makes no significant new or additional contribution to existing pollution.

§ 6.704 Environmental review process.

Environmental review activities will be integrated into the decision levels of ORD's research planning system to assure managerial control.

(a) *Environmental information.* (1) Environmental information documents shall be submitted with all grant applications and all unsolicited contract proposals. The documents shall contain the same information required for EISs under Subpart B. Guidance on environmental information documents shall be included in all grant application kits and attached to instructions for the submission of unsolicited proposals.

(2) In the case of competitive contracts, environmental information documents need not be submitted by potential contractors since the environmental review procedures must be completed before a request for proposal (RFP) is issued. If there is a question concerning the need for an environmental information document, the potential contractor should contact the official responsible for the contract.

(b) *Environmental review.* (1) At the start of the planning year, an environmental review will be performed for each program plan with its supporting substructures (work plans and projects) before incorporating them into the ORD program planning system, unless they are excluded from review by existing legislation. This review is an evaluation of the potentially adverse environmental effects of the efforts required by the program plan. The criteria in § 6.703 above shall be used in conducting this review. Each program plan with its supporting substructures which does not have significant adverse impacts may be dismissed from further current year environmental considerations with a single FNSI. Any supporting substructures of a program plan which cannot be dismissed with the parent plan shall be reviewed at the appropriate subordinate levels of the planning system.

(i) All continuing program plans and supporting substructures, including those previously dismissed from consideration, will be reevaluated annually. An environmental review will coincide with the annual planning cycle and whenever a major redirection of a parent plan is undertaken. All environmental documents will be updated as appropriate.

(ii) Later plans and/or projects, added to fulfill the mission objectives but not identified at the time program plans were approved, will be subjected to the same environmental review.

(2) The responsible official shall assure completion of the EPA Form 5300–23 for each extramural project subject to an environmental review. If the project consists of literature studies, computer studies, or studies in which essentially all work is performed within the confines of the laboratory, the Form 5300–23 may be issued as a finding of no significant impact.

(c) *Notice of intent and EIS.* (1) If the reviews conducted according to § 6.704(b) above reveal a potential significant adverse effect on the environment and the adverse impact cannot be eliminated by replanning, the appropriate program official shall issue a notice of intent and through proper organizational channels shall request the Regional Administrator to assist him in the preparation and distribution of the EIS.

(2) As soon as possible after release of the notice of intent, the appropriate program official shall prepare a draft EIS in accordance with subpart B and distribute the draft EIS in accordance with subpart D.

(3) All draft and final EISs shall be sent through the proper organizational channels to the Assistant Administrator for ORD for approval.

(d) *Finding of no significant impact.* If an environmental review conducted according to § 6.704(b) above reveals that proposed actions will not have significant adverse environmental impacts, the appropriate program official shall prepare a FNSI which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(e) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract or grant be awarded or intramural activity undertaken until the prescribed 30-day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30-day comment period for a FNSI is completed.

§ 6.705 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award or before the undertaking of the intramural activity. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

§ 6.800 Purpose.

This subpart amplifies the procedures described in subparts A through D by providing more specific environmental review procedures for demonstration projects undertaken by the Office of Solid Waste (OSW).

§ 6.801 Applicability.

The requirements of this subpart apply to solid waste demonstration projects for resource recovery systems and improved solid waste disposal facilities undertaken pursuant to § 8006 of the Resource Conservation and Recovery Act of 1976.

§ 6.802 Criteria for preparing EISs.

The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions in § 6.506(a) (1) through (6) and (8) exist.

§ 6.803 Environmental review process.

(a) *Environmental information.* (1) Environmental information documents shall be submitted to EPA by grant applicants or contractors. If there is a question concerning the need for a document, the potential contractor or grantee should consult with the appropriate project officer for the grant or contract.

(2) The environmental information document shall contain the same sections specified for EIS's in Subpart B. Guidance alerting potential grantees and contractors of the environmental information documents shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposal.

(b) *Environmental review.* An environmental review will be conducted before a grant or contract award is made. This review will include the preparation of an environmental assessment by the responsible official; the appropriate Regional Administrator's input will include his recommendations on the need for an EIS.

(c) *Notice of intent and EIS.* Based on the environmental review if the criteria in § 6.802 above apply, the responsible official will assure that a notice of intent and a draft EIS are prepared. The responsible official may request the appropriate Regional Administrator to assist him in the preparation and distribution of the environmental documents.

(d) *Finding of no significant impact.* If the environmental review indicated no significant environmental impacts, the responsible official will assure that a FNSI is prepared which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(e) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract or grant be awarded until the prescribed 30-day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30-day comment period for a FNSI is completed.

§ 6.804 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

§ 6.900 Purpose.

This subpart amplifies the general requirements described in subparts A through D by providing environmental procedures for the preparation of EISs on construction and renovation of special purpose facilities.

§ 6.901 Definitions.

(a) The term "special purpose facility" means a building or space, including land incidental to its use, which is wholly or predominantly utilized for the special purpose of an agency and not generally suitable for other uses, as determined by the General Services Administration.

(b) The term "program of requirements" means a comprehensive document (booklet) describing program activities to be accomplished in the new special purpose facility or improvement. It includes architectural, mechanical, structural, and space requirements.

(c) The term "scope of work" means a document similar in content to the program of requirements but substantially abbreviated. It is usually prepared for small-scale projects.

§ 6.902 Applicability.

(a) *Actions covered.* These procedures apply to all new special purpose facility construction, activities related to this construction (e.g., site acquisition and clearing), and any improvements or modifications to facilities having potential environmental effects external to the facility, including new construction and improvements undertaken and funded by the Facilities Management Branch, Facilities and Support Services Division, Office of Management and Agency Services; by a regional office; or by a National Environmental Research Center.

(b) *Actions excluded.* This subpart does not apply to those activities of the Facilities Management Branch, Facilities and Support Services Division, for which the branch does not have full fiscal responsibility for the entire project. This includes pilot plant construction, land acquisition, site clearing and access road construction where the Facilities Management Branch's activity is only supporting a project financed by a program office. Responsibility for considering the environmental impacts of such projects rests with the office managing and funding the entire project. Other subparts of this regulation apply depending on the nature of the project.

§ 6.903 Criteria for preparing EISs.

(a) *Preliminary information.* The responsible official shall request an environmental information document from a construction contractor or consulting architect/engineer employed by EPA if he is involved in the planning, construction or modification of special purpose facilities when his activities have potential environmental effects external to the facility. Such modifications include but are not limited to facility additions, changes in central heating systems or wastewater treatment systems, and land clearing for access roads and parking lots.

(b) *EIS preparation criteria.* The responsible official shall conduct an environmental review of all actions involving construction of special purpose facilities and improvements to these facilities. The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions in § 6.506(a) (1) through (6) and (8) above exist.

§ 6.904 Environmental review process.

(a) *Environmental review.* (1) An environmental review shall be conducted when the program of requirements or scope of work has been completed for the construction, improvements, or modification of special purpose facilities. For special purpose facility construction, the Chief, Facilities Management Branch, shall request the assistance of the appropriate program office and Regional Administrator in the review. For modifications and improvement, the appropriate responsible official shall request assistance in making the review from other cognizant EPA offices.

(2) Any environmental information documents requested shall contain the same sections listed for EISs in subpart B. Contractors and consultants shall be notified in contractual documents when an environmental information document must be prepared.

(b) *Notice of intent, EIS, and FNSI.* The responsible official shall decide at the completion of the Environmental review whether there may be any significant environmental impacts. If there could be significant environmental impacts, a notice of intent and an EIS shall be prepared according to the procedures under subparts A, B, C and D. If there are not any significant environmental impacts, a FNSI shall be prepared according to the procedures in subparts A and D. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(c) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract be awarded or construction activities begun until the prescribed 30-day wait period for a final EIS has elapsed. Similarly, under § 6.400(d), no action shall be taken until the 30-day comment period for FNSIs is completed.

§ 6.905 Record of decision.

At the time of contract award, the responsible official shall prepare a record of decision in those cases where a final EIS has been issued in accordance with 40 CFR 1505.2. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Appendix A—Statement of Procedures on Floodplain Management and Wetlands Protection

Contents:

Section 1 General

a. Executive Order 11988 entitled "Floodplain Management" dated May 24, 1977, requires Federal agencies to evaluate the potential effects of actions it may take in a floodplain to avoid adversely impacting floodplains wherever possible, to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management, including the restoration and preservation of such land areas as natural undeveloped floodplains, and to prescribe procedures to implement the policies and procedures of this Executive Order. Guidance for implementation of the Executive Order has been provided by the U.S. Water Resources Council in its Floodplain Management Guidelines dated February 10, 1978 (see 40 FR 6030).

b. Executive Order 11990 entitled "Protection of Wetlands", dated May 24, 1977, requires Federal agencies to take action to avoid adversely impacting wetlands wherever possible, to minimize wetlands destruction and to preserve the values of wetlands, and to prescribe procedures to implement the policies and procedures of this Executive Order.

c. It is the intent of these Executive Orders that, wherever possible, Federal agencies implement the floodplains/wetlands requirements through existing procedures, such as those internal procedures established to implement the National Environmental Policy Act (NEPA) and OMB A-95 review procedures. In those instances where the environmental impacts of a proposed action are not significant enough to require an environmental impact statement (EIS) pursuant to section 102(2)(C) of NEPA, or where programs are not subject to the requirements of NEPA, alternative but equivalent floodplain/wetlands evaluation and notice procedures must be established.

Section 2 Purpose

a. The purpose of this Statement of Procedures is to set forth Agency policy and guidance for carrying out the provisions of Executive Orders 11988 and 11990.

b. EPA program offices shall amend existing regulations and procedures to incorporate the policies and procedures set forth in this Statement of Procedures.

c. To the extent possible, EPA shall accommodate the requirements of Executive Orders 11988 and 11990 through the Agency NEPA procedures contained in 40 CFR Part 6.

Section 3 Policy

a. The Agency shall avoid wherever possible the long and short term impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

b. The Agency shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes. It shall also promote the preservation and restoration of floodplains so that their natural and beneficial values can be realized. To the extent possible EPA shall:

(1) Reduce the hazard and risk of flood loss and wherever it is possible to avoid direct or indirect adverse impact on floodplains;

(2) Where there is no practical alternative to locating in a floodplain, minimize the impact of floods on human safety, health, and welfare, as well as the natural environment;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of EPA structures and facilities to be in accordance with the standards and criteria, of the regulations promulgated pursuant to the National Flood Insurance Program;

(5) Identify floodplains which require restoration and preservation and recommend management programs necessary to protect these floodplains and to include such considerations as part of on-going planning programs; and

(6) Provide the public with early and continuing information concerning floodplain management and with opportunities for participating in decision making including the (evaluation of) tradeoffs among competing alternatives.

c. The Agency shall incorporate wetlands protection considerations into its planning, regulatory, and decisionmaking processes. It shall minimize the destruction, loss, or degradation of wetlands and preserve and enhance the natural and beneficial values of wetlands. Agency activities shall continue to be carried out consistent with the Administrator's Decision Statement No. 4 dated February 21, 1973 entitled "EPA Policy to Protect the Nation's Wetlands."

Section 4 Definitions

a. "Base Flood" means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

b. "Base Floodplain" means the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

c. "Flood or Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source, or flooding from any other source.

d. "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters and other floodprone areas such as offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

e. "Floodproofing" means modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

f. "Minimize" means to reduce to the smallest possible amount or degree.

g. "Practicable" means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, community welfare, cost, or technology.

h. "Preserve" means to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

i. "Restore" means to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

j. "Wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that

requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Section 5 Applicability

a. The Executive Orders apply to activities of Federal agencies pertaining to (1) acquiring, managing, and disposing of Federal lands and facilities, (2) providing Federally undertaken, financed, or assisted construction and improvements, and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

b. These procedures shall apply to EPA's programs as follows: (1) All Agency actions involving construction of facilities or management of lands or property. This will require amendment of the EPA Facilities Management Manual (October 1973 and revisions thereafter).

(2) All Agency actions where the NEPA process applies. This would include the programs under section 306/402 of the Clean Water Act pertaining to new source permitting and section 201 of the Clean Water Act pertaining to wastewater treatment construction grants.

(3) All agency actions where there is sufficient independent statutory authority to carry out the floodplain/wetlands procedures.

(4) In program areas where there is no EIS requirement nor clear statutory authority for EPA to require procedural implementation, EPA shall continue to provide leadership and offer guidance so that the value of floodplain management and wetlands protection can be understood and carried out to the maximum extent practicable in these programs.

c. These procedures shall not apply to any permitting or source review programs of EPA once such authority has been transferred or delegated to a State. However, EPA shall, to the extent possible, require States to provide equivalent effort to assure support for the objectives of these procedures as part of the state assumption process.

Section 6 Requirements

a. Floodplain/Wetlands review of proposed Agency actions.

(1) *Floodplain/Wetlands Determination*—Before undertaking an Agency action, each program office must determine whether or not the action will be located in or affect a floodplain or wetlands. The Agency shall utilize maps prepared by the Federal Insurance Administration (Flood insurance Rate Maps or Flood Hazard Boundary Maps), Fish and Wildlife Service (National Wetlands Inventory Maps), and other appropriate agencies to determine whether a proposed action is located in or will likely affect a floodplain or wetlands. If there is no adverse floodplain/wetlands impact identified, the action may proceed without further consideration of the remaining procedures set forth below.

(2) *Early Public Notice*—When it is apparent that a proposed or potential agency action is likely to impact a floodplain or wetlands, the public should be informed through appropriate public notice procedures.

(3) *Floodplain/Wetlands Assessment*—If the Agency determines a proposed action is located in or affects a floodplain or wetlands, a floodplain/wetlands assessment shall be undertaken. For those actions where an environmental assessment (EA) or environmental impact statement (EIS) is prepared pursuant to 40 CFR Part 6, the floodplain/wetlands assessment shall be prepared concurrently with these analyses and shall be included in the EA or EIS. In all other cases, a "floodplain/wetlands assessment" shall be prepared. Assessments shall consist of a description of the proposed action, a discussion of its effect on the floodplain/wetlands, and shall also describe the alternatives considered.

(4) *Public Review of Assessments*—For proposed actions impacting floodplain/wetlands where an EA or EIS is prepared, the opportunity for public review will be provided through the EIS provisions contained in 40 CFR Parts 6, 25, or 35, where appropriate. In other cases, an equivalent public notice of the floodplain/wetlands assessment shall be made consistent with the public involvement requirements of the applicable program.

(5) *Minimize, Restore or Preserve*—If there is no practicable alternative to locating in or affecting the floodplain or wetlands, the Agency shall act to minimize potential harm to the floodplain or wetlands. The Agency shall also act to restore and preserve the natural and beneficial values of floodplains and wetlands as part of the analysis of all alternatives under consideration.

(6) *Agency Decision*—After consideration of alternative actions, as they have been modified in the preceding analysis, the Agency shall select the desired alternative. For all Agency actions proposed to be in or affecting a floodplain/wetlands, the Agency shall provide further public notice announcing this decision. This decision shall be accompanied by a Statement of Findings, not to exceed three pages. This Statement shall include: (i) The reasons why the proposed action must be located in or affect the floodplain or wetlands; (ii) a description of significant facts considered in making the decision to locate in or affect the floodplain or wetlands including alternative sites and actions; (iii) a statement indicating whether the proposed action conforms to applicable State or local floodplain protection standards; (iv) a description of the steps taken to design or modify the proposed action to minimize potential harm to or within the floodplain or wetlands; and (v) a statement indicating how the proposed action affects the natural or beneficial values of the floodplain or wetlands. If the provisions of 40 CFR Part 6 apply, the Statement of Findings may be incorporated in the final EIS or in the environmental assessment. In other cases, notice should be placed in the Federal Register or other local medium and copies sent to Federal, State, and local agencies and other entities which submitted comments or are otherwise concerned with the floodplain/wetlands assessment. For floodplain actions subject to Office of Management and Budget (OMB) Circular A-95, the Agency shall send the Statement of Findings to State and areawide A-95 clearinghouse in the geographic area affected. At least 15 working days shall be allowed for public and interagency review of the Statement of Findings.

(7) *Authorizations/Appropriations*—Any requests for new authorizations or appropriations transmitted to OMB shall include, a floodplain/wetlands assessment and, for floodplain impacting actions, a Statement of Findings, if a proposed action will be located in a floodplain or wetlands.

b. *Lead agency concept.* To the maximum extent possible, the Agency shall relay on the lead agency concept to carry out the provisions set forth in section 6.a. above. Therefore, when EPA and another Federal agency have related actions, EPA shall work with the other agency to identify which agency shall take the lead in satisfying these procedural requirements and thereby avoid duplication of efforts.

c. *Additional floodplain management provisions relating to Federal property and facilities.*

(1) *Construction Activities*—EPA controlled structures and facilities must be constructed in accordance with existing criteria and standards set forth under the NFIP and must include mitigation of adverse impacts wherever feasible. Deviation from these requirements may occur only to the extent NFIP standards are demonstrated as inappropriate for a given structure or facility.

(2) *Flood Protection Measures*—If newly constructed structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be undertaken. To achieve flood protection, EPA shall, wherever practicable, elevate structures above the base flood level rather than filling land.

(3) *Restoration and Preservation*—As part of any EPA plan or action, the potential for restoring and preserving floodplains and wetlands so that their natural and beneficial values can be realized must be considered and incorporated into the plan or action wherever feasible.

(4) *Property Used by Public*—If property used by the public has suffered damage or is located in an identified flood hazard area, EPA shall provide on structures, and other places where appropriate, conspicuous indicators of past and probable flood height to enhance public knowledge of flood hazards.

(5) *Transfer of EPA Property*—When property in flood plains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, EPA shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other

restrictions to uses of the property as may be deemed appropriate. Notwithstanding, EPA shall consider withholding such properties from conveyance.

Section 7 Implementation.

a. Pursuant to section 2, the EPA program offices shall amend existing regulations, procedures, and guidance, as appropriate, to incorporate the policies and procedures set forth in this Statement of Procedures. Such amendments shall be made within six months of the date of these Procedures.

b. The Office of Federal Activities (OFA) is responsible for the oversight of the implementation of this Statement of Procedures and shall be given advanced opportunity to review amendments to regulations, procedures, and guidance. OFA shall coordinate efforts with the program offices to develop necessary manuals and more specialized supplementary guidance to carry out this Statement of Procedures.

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Tuesday
November 6, 1979

Part III

Department of Housing and Urban Development

Low-Income Housing; Modernization Program; PHA-Owned Projects

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 868

[Docket No. R-79-637]

Low-Income Housing; Modernization Program—PHA-Owned Projects

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is issuing a final rule amending Part 868 to make the Public Housing Modernization Program applicable to homeownership projects under the Turnkey III Homeownership Opportunities Program and the Mutual Help Homeownership Opportunities Program, and to incorporate other changes which are relatively minor.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Wayne Hunter, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6460 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 27, 1979, the Department of Housing and Urban Development published a Notice of Proposed Rulemaking (44 FR 25142) to amend its existing rule on the Public Housing Modernization Program (24 CFR 868), for the primary purpose of making that program applicable to homeownership opportunity projects. Comments were invited until June 26, 1979.

Comments were received from six organizations and individuals. Each comment was carefully considered. The following is a summary of the changes made to the proposed rule and of the comments received.

The format of the final rule represents a change from that indicated by the proposed rule. Under the proposed rule, Part 868 would have been divided into two subparts—one (Subpart A) covering modernization of rental projects only, and the other (Subpart B) covering modernization of homeownership projects only (Turnkey III and Mutual Help). Each of these subparts was to have contained a largely complete set of program provisions. Because most of the provisions of the existing rule, already applicable to rental projects, were to have been equally applicable to homeownership projects, much of Subpart B of the proposed rule merely repeated provisions of Subpart A. The comments on the proposed rule indicated that this format was confusing, creating the impression that essentially separate programs were being established for rental and homeownership projects and that some existing program procedures, as repeated in Subpart B of the proposed rule, represented completely new requirements.

The basic purpose of these amendments is to make the Modernization Program applicable to homeownership projects. Although the proposed rule indicated a number of significant differences in how the program would be applied to rental and homeownership projects, most policies and procedures were meant to be equally applicable to both types of public housing projects. It was not intended to establish, either in form or in substance, two separate Modernization Programs.

Accordingly, the final rule is not divided into subparts. It sets forth a single set of program requirements, indicating at the outset that they are generally applicable to all public housing projects owned by public housing agencies (PHAs). Where a specific provision is applicable only to rental projects or to homeownership projects, it contains an express statement to that effect. Otherwise, each provision of the rule is applicable to both types of projects.

This change in format does not affect the substance of the rule. In order to provide a complete, updated reference, the final rule sets forth Part 868 in its entirety, with amendments adopted as a consequence of the proposed rule. The following is an explanation of these amendments, with discussion of the comments on the proposed rule.

The table of contents has been changed to reflect the reorganization of the text. In § 868.1, language which stated that the part was not applicable to homeownership projects (Turnkey III and Mutual Help) has been deleted. In response to one comment, language has been added to make it clear that the term "Public Housing Agencies" (PHAs) includes Indian Housing Authorities (IHAs).

The section on definitions (Section 868.2 in both the final rule and the previous rule) incorporates the definition of "Homebuyer Agreement," as it was stated in § 868.202 of the proposed rule.

The section on priority work items (Section 868.3 of the previous rule as well as this final rule) is unchanged from the previous rule, except for inclusion of the reference to tribal law and insertion of the word "applicable."

Procedural changes which were reflected in the proposed rule have been incorporated in § 868.4 (the parallel provision of the previous rule had the same number). Under paragraph (g)(3), reference to tribal government is inserted. Paragraph (h) has been modified to a more concise form, without substantive change.

Paragraph (i) of § 868.4 imposes an unqualified prohibition against the use of modernization funds to correct construction and design deficiencies. A number of commentors objected to this change (reflected in the proposed rule as an amendment to § 868.104(i) and also in § 868.203(i)). Some of these comments failed to recognize the distinction between true deficiencies in design and construction, on the one hand, and needs attributable to changes in building standards, on the other. Accordingly, the prohibition has been changed to refer to "construction and design deficiencies which are attributable to failure to implement HUD-approved design and construction standards which were applicable at the time of the project's development."

Thus, capital improvements necessary to satisfy higher standards than those employed at the time of original development remain eligible modernization work items. In the case of deficiencies attributable to failure to implement HUD-approved design and construction standards which were applicable at the time of the project's development, the PHA is expected, where justified by the circumstances, to look to its contractors for correction or remedial action. If this recourse is not available, consideration should be given to additional HUD development funding.

Also in § 868.4, paragraph (j) reflects a change from the parallel provision of the previous rule (also Section 868.4(k)), by adding a cross-reference to homebuyer participation requirements.

Paragraph (k) of § 868.4 combines certain references to applicable statutes and Executive Orders.

Paragraph (l) under § 868.4 is a modified version of § 868.203(d) of the proposed rule. Some commentors objected to the prohibition against the use of modernization funds, in the case of homeownership, for major repairs or replacements. The rationale for this limitation is that homeownership programs require that replacements and repairs be provided for by the homebuyer or be paid for out of nonroutine maintenance reserves.

The final rule contains alternative provisions on resident participation. The first of these is § 868.5, which is the same as the parallel provision of the previous rule (also numbered § 868.5), except that, in the final rule, language is added to make it clear that this provision applies to rental projects only.

The second of these is § 865.6 which applies to homeownership projects only. This section is a slightly modified version of the provision published as § 868.205 of the proposed rule.

With regard to this provision, one comment advocated revision of the proposed rule to insure that homebuyer families know the cost of the modernization work and the terms of their revised homeownership agreements before the work is done. It is, of course, impossible to know the exact actual cost until the work is completed, although initial estimates should be as accurate as possible. Therefore, to avoid an open-ended obligation on the part of the homebuyer, this regulation requires that the homebuyer's agreement, under § 868.6(d) will limit the homebuyer's obligation to a specified estimated amount. Accordingly, the final rule refers to the estimated modernization costs and not (as in paragraphs (b) and (d) of the § 868.205 of the proposed rule) to "actual" costs. Thus, the cost which is to be assumed as the homebuyer's obligation will be the cost which is estimated, submitted and approved in the Final Application.

The final rule's §§ 868.7 and 868.8 incorporate two provisions of the existing rule (Sections 868.6 and 868.6a), with only minor changes. A reference to the tribal cooperation ordinance has been added in § 868.7(d)(5). In § 868.8(b), language has been added to make it clear that the requirement for continued low-income use is not intended to preclude sale of units to homebuyers in accordance with ACCs for Turnkey III and Mutual Help projects.

One comment expressed concern over whether the standard 20-year annual contributions period for the PHA's modernization debt (Section 868.8 of the final rule) would be the basis for extending the homebuyer's purchase price amortization period. The answer is no. The extension of the homebuyer's purchase price amortization period is independently determined under § 868.16, by the proportionate increase in the purchase price.

For those projects in which each homebuyer has been provided with a purchase price schedule based on a fixed number of years, this schedule is extended for an additional period proportional to the modernization cost increase in the total purchase price. The homebuyer will be furnished with a new purchase price schedule based on the longer period, but commencing on the same day as the original purchase price schedule.

For homebuyers in Mutual Help projects that were placed under ACC before March 9, 1976, and not converted in accordance with 24 CFR 805.428, the homebuyers do not have a purchase price schedule based upon any fixed number of years because the purchase price for these homebuyers is based upon the unamortized balance of the project's development debt attributable to the home. For this reason, it was determined that a separate additional purchase price schedule should be furnished to the homebuyer with respect to its share of the modernization cost only. This modernization cost schedule will also commence on the date of original occupancy of the home, and it will continue for 25 years plus an additional period proportional to the increase in cost resulting from the modernization. Twenty-five years is used as the basis for this calculation because that is the number of years used in the purchase price schedules provided pursuant to current HUD Regulations in the Mutual Help Program.

The final rule's § 868.9, concerning contracting requirements, makes no change in the parallel provisions of the previous regulation (Section 868.7), except for the insertion of references to tribal law. Despite the insertion of these references in the parallel provision of Subpart B of the proposed rule (Section 868.207), one comment argued that the references to state and local laws were in derogation of the sovereignty of Indian tribes which are not subject to state and local laws. This was not the intent of the proposed rule, nor is it the intent of the final rule. The applicability of the law of a particular state, Indian tribe or local jurisdiction is, of course, a matter for legal determination in each case.

Another comment advocated a restatement under the provision on contracting requirements (Section 868.9 of the final rule) of the Federal statutory requirements for Indian preference in employment and contracting. This is unnecessary. The point is already covered by § 868.4(h), which refers specifically to §§ 805.105 and 106 where the subject of Indian preference is explained.

The section on labor provisions (Section 868.10) is as set forth in §§ 868.108 and 868.208 of the proposed rule. Two commentors expressed dissatisfaction with this provision. One of them maintained that Davis-Bacon wage rates should apply to all modernization work in excess of $10,000.00. The other reflected concern that Davis-Bacon wage rates would add a financial burden for the homebuyer, because the cost of the modernization work would be added to the homebuyer's purchase price, and recommended that smaller jobs be exempted from Davis-Bacon requirements. The scope of Davis-Bacon coverage depends on the nature of the work, not its cost, so that distinctions specified in § 868.10 are valid. The Department is not legally authorized to grant exemptions where Davis-Bacon coverage is required by statute.

The final rule's sections on requests for modernization funds (Section 868.11), monitoring and evaluation (Section 868.12), revisions of the modernization program budget (Section 868.13), revisions of the modernization work program (Section 868.14) and completion of modernization programs (Section 868.15) incorporate parallel provisions of the previous rule (Sections 868.9 through 868.13) with only minor changes.

The last section of the final rule (Section 868.16) pertains to homeownership projects only and is a revised version of the parallel provision of the proposed rule (Section 868.214).

A number of other comments on the proposed regulation touched on a variety of relatively minor points of interpretation, most of them involving provisions of the previous regulation, which would be applicable to both rental and homeownership projects. The need for procedural clarification indicated by these comments would best be met by revision of the program Handbooks.

Finally, one commentor directed a series of general comments at what were characterized as excessive administration burdens on the PHA. Although these comments did not reflect an understanding of the basic structure of the modernization program and the legal relationship between the PHA and HUD, the Department is keenly aware of the desirability of streamlining procedures and minimizing the administrative burdens of the programs. As continuing efforts are made in that direction, specific recommendations from PHAs or other interested parties will receive careful consideration.

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Procedures for Protection and Enhancement of Environmental Quality. This Rule has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions or levels of government. Copies of the Findings are available for inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Office of the General Counsel, Department of Housing and

Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, 24 CFR 868 is amended to read as follows:

PART 868—MODERNIZATION PROGRAM—PHA-OWNED PROJECTS

Sec.
868.1 Purpose and scope.
868.2 Definitions.
868.3 Priority work items.
868.4 Eligibility requirements for an allocation of modernization funds.
868.5 Resident participation—rental project.
868.6 Homebuyer participation—homeownership project.
868.7 Procedures for obtaining approval of a modernization program.
868.8 Modernization project.
868.9 Contracting requirements.
868.10 Labor provisions.
868.11 Requests for modernization funds.
868.12 Monitoring and evaluation.
868.13 Revisions of the modernization program budget.
868.14 Revisions of the modernization work programs.
868.15 Completion of modernization programs.
868.16 Effect on purchase price and amortization period.

Authority: United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 868.1 Purpose and scope.

The purpose of this Part is to prescribe requirements and procedures for Modernization by Public Housing Agencies (PHAs)—including Indian Housing Authorities (IHAs)—of PHA-owned low-income public housing projects, including conveyed Lanham and Public Works Administration (PWA) projects, to upgrade living conditions, correct physical deficienices, and achieve operating efficiency and economy. This Part does not apply to the Section 23 and Section 10(c) Leased Housing Programs, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, or the Modernization of low-income public housing projects undertaken with funds derived from the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5316).

§ 868.2 Definitions

As used in this Part:

"Act" means the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.).

"Annual Contributions Contract" (ACC) means a contract under the Act between the Department of Housing and Urban Development (HUD) and the PHA, containing the terms and conditions under which the Secretary makes loans and annual contributions to assist PHAs in providing decent, safe, and sanitary housing for families of low-income, and provides modernization funds to PHAs to modernize PHA-owned, low-income public housing projects.

"Force Account Labor" means labor employed directly by the PHA on a permanent or a temporary basis.

"Homebuyer Agreement" means a Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

"Major Repairs" means work items that are usually not recurrent, are substantial in scope, involve expenditures that would otherwise materially distort the level trend of maintenance expense, are not the result of PHA failure to perform adequate maintenance during the period after April 1, 1975, and may include the replacement of structural elements due to normal wear and tear by items of substantially the same kind.

"Modernization" means capital improvements, such as alterations, betterments, additions, replacements or major repairs, that appreciably extend the useful life of the property (site, structures, or nonexpendable equipment), increase its value or utility, or make it more suitable for its intended use.

"Modernization funds" means funds derived from an allocation of contract authority under section 5 of the Act for the purpose of financing capital improvements under an approved modernization program.

"Operating Funds" means all project revenues (dwelling rentals, interest income received during the operation of the project, etc.), operating reserves, and HUD operating subsidies as shown on the PHA's approved operating budget.

"Work Items" means any separately identifiable unit of work constituting a part of a modernization program.

§ 868.3 Priority work items.

Work Items relating to energy conservation, compliance with applicable Federal, State, tribal and local laws relating to health and safety, preservation of the basic integrity of the structures and systems, and immediate and demonstrable cost-savings to the PHA are priority work items.

§ 868.4 Eligibility requirements for an allocation of modernization funds.

To be eligible for an allocation of modernization funds, the PHA shall:

(a) Present evidence of the actual need for the proposed work items;

(b) Propose the most economical way of accomplishing needed work items;

(c) Provide accurate cost estimates;

(d) Limit proposed modernization expenditures to eligible work items;

(e) Limit proposed work items to work items that cannot be funded from current operating funds or development funds;

(f) Present evidence of management capability to complete the proposed modernization program within a two-year period beginning after amendment of the ACC;

(g) Present a plan acceptable to HUD for the correction of any deficiencies in management practices for:

(1) Routine maintenance operations;

(2) Preventive maintenance;

(3) Services and support from local, tribal, and State government and community organizations for the project, including the ongoing operations of any recreational and community facilities;

(4) Rent collection policies and practices;

(5) Tenant selection policies;

(6) PHA progress in achieving resident employment where the PHA operates more than 500 dwelling units; or

(7) Other PHA management practices specifically identified by HUD.

(h) In the case of PHAs other than IHAs, present a signed certificate on the prescribed form of the PHA's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968. (For IHAs see § 805.105 (Applicability of civil rights statutes) and § 805.106 (Preferences, opportunities, and nondiscrimination in employment and contracting).

(i) Propose no modernization program to correct construction and design deficiencies which are attributable to failure to implement HUD-approved design and construction standards which were applicable at the time of the project's development.

(j) Present evidence of compliance with resident participation requirements under § 868.5 of this Part, or, for a homeownership project, homebuyer participation requirements under § 868.6 of this Part;

(k) Modernization work under this Part shall be in compliance with any applicable requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historical Preservation Act (Pub. L. 89–665), the Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291), Executive Order 11593 on Protection and Enhancement of the Cultural Environment (including the

procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800), the Clean Air Act (42 U.S.C. 1857 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(l) For homeownership projects only, limit proposed modernization expenditures to eligible work items which would constitute alterations, betterments or additions to meet applicable HUD standards for family housing need or suitability, including work items for energy conservation or elimination of barriers for the handicapped. Major repairs or replacements are not eligible work items for homeownership projects.

(m) For homeownership projects only, present evidence that the homebuyer family of each unit to be modernized is in substantial compliance with the terms of its Homebuyer Agreement.

§ 868.5 Resident participation—Rental project.

For a rental project only, the PHA shall notify the residents of the project to be modernized and the resident organization, if any, of the proposed modernization program, afford residents a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to resident recommendations. The PHA shall provide HUD with an evaluation of resident recommendations, indicating the reasons for PHA acceptance or rejection, consistent with the priority work items under § 868.3 and the PHA's own determination of efficiency, economy, and need. The PHA shall also provide a copy of this evaluation to the residents and the resident organization, if any. After HUD approval of the modernization program, the PHA shall inform the residents and the resident organization, if any, of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature, affecting the life, health, and safety of residents.

§ 868.6 Homebuyer participation—Homeownership project.

(a) For a homeownership project only, the PHA shall discuss the modernization program with the homebuyer families of the project to be modernized and shall advise them of the effect of such modernization on the terms of their Homebuyer Agreements. The homebuyer families shall be afforded a reasonable opportunity to present their views on the proposed program and the PHA shall give full and serious consideration to their recommendations consistent with the priority work items under § 868.3 and the PHA's own determination of efficiency, economy and need.

(b) The PHA shall afford each homebuyer family an opportunity (1) to express its views and preferences with respect to the modernization of its home; (2) to know that the purchase price and the amortization period will be increased as provided in § 868.16; (3) to know that the family will have an opportunity to participate in the regular inspection process and in the final inspection of the work in order to determine completion in accordance with the requirements; and (4) to decide whether to participate in the program.

(c) The PHA shall provide each homebuyer family with a copy of the PHA's evaluation of their recommendations, the tentative decisions reached with respect to a modernization program to be submitted to HUD, the estimated cost of the proposed modernization program, and the amount of this cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its Homebuyer Agreement will be amended upon approval of the Final Application to provide that as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased in accordance with § 868.16.

(e) Any homebuyer family may decline to participate without risk to its homebuyer status.

(f) Records of homebuyer family participation and agreements required by this section shall be retained in the PHA's files for inspection by HUD.

(g) In case of work items of an emergency nature, affecting the life, health or safety of certain homebuyer families, the provisions of this section may be modified by the PHA to the extent necessary to permit expeditious discussions and agreement with the affected homebuyers.

§ 868.7 Procedures for obtaining approval of a modernization program.

(a) *Informal consultation.* The PHA shall consult with the appropriate HUD office to discuss its modernization needs, to obtain information and advice on HUD policies and procedures, and to explore the availability of modernization funds.

(b) *Preliminary Application.* The PHA shall submit to the appropriate HUD Office a Preliminary Application in letter form which shall contain:

(1) A brief description and justification of each work item proposed for each project and the preliminary estimated amount of modernization funds needed to finance each work item;

(2) The reasons the work items proposed cannot be financed from current operating funds or development funds;

(3) An estimate of additional modernization funds, if any, needed to complete previously approved modernization programs.

(c) *HUD–PHA Joint Review.* The PHA shall participate in an on-site review with the appropriate HUD office to develop a mutual agreement on the scope of the proposed modernization program and the details of the final application.

(1) The joint review shall include:

(i) On-site inspection of the proposed work items for each project, the time for completion, the method of accomplishment (by contract or Force Account Labor), cost estimates, and the method of PHA inspection of the work;

(ii) PHA need for the technical services of a professional architect/engineer in planning, designing, and implementing all or part of the proposed modernization program;

(iii) PHA plan for organizing and staffing the modernization program;

(iv) PHA performance in administering previously approved modernization programs, if applicable;

(v) PHA compliance with applicable civil rights statutes, executive orders, and regulations under § 868.4(h);

(vi) Determination of the applicability of § 868.4(i);

(vii) PHA compliance with resident participation requirements under § 868.5 or § 868.6;

(viii) Determination of the applicability of § 868.4(k);

(ix) PHA management practices; and

(x) Project characteristics, including:

(A) Anticipated occupancy rate after completion of the proposed modernization program;

(B) Relationship of the project to the adjacent neighborhood;

(C) General physical condition of the project's systems and structures; and

(D) Availability of community services.

(2) HUD reserves the option to:

(i) Deemphasize the provisions of paragraph (c)(1)(ix) and paragraph (c)(1)(x) of this section where only priority work items are proposed; and

(ii) Exclude coverage of those items required under paragraph (c)(1) of this section that have been covered by audit or other HUD review process conducted within the preceding six months.

(d) *Final Application.* Upon notification from HUD, the PHA shall submit to the appropriate HUD office the Final Application which shall contain:

(1) A program budget, in a form prescribed by HUD, describing each work item, amount of modernization funds requested, method of accomplishment, estimated dates for starting and completing work, and a summary of work items by project. For homeownership projects only: the PHA shall submit with the program budget a statement listing which units are to be included in this modernization program and the estimated amount of the modernization cost attributed to each home. Copies of agreements signed by each homebuyer consenting to the modernization work shall, pursuant to § 868.6, also be submitted with this statement;

(2) A work program, in a form prescribed by HUD, stating the estimated amount of modernization funds to be expended and the estimated work to be completed for each work item by quarter for eight quarters (a two-year period);

(3) An organization and staffing plan, stating the proposed organization, staffing, and inspection of the program;

(4) A management plan, describing any management work items and estimated progress by quarter for eight quarters (a two-year period) where management deficiencies have been identified by HUD.

(i) A plan for the utilization to the fullest extent possible of minority and female-owned business enterprise participation in the proposed modernization program. Such plan shall include, but not be limited to, the identification of types of businesses which are minority and/or female-owned, as well as the proposed dollar amounts which may be awarded to such businesses.

(5) A PHA report on compliance by the local governing body with the terms of the Cooperation Agreement or tribal Cooperation Ordinance, as applicable and any additional services or facilities that the PHA plans to request from the local government body;

(6) Environmental data, in a form prescribed by HUD, if required; and

(7) A resolution by the PHA Board of Commissioners:

(i) Approving the program budget, the work program, the organization and staffing plan; and the management plan; and

(ii) Certifying that:

(A) The PHA will comply with all policies, procedures, and requirements, prescribed by HUD for the modernization program;

(B) The estimated costs of the modernization program cannot be funded from current operating funds;

(C) The proposed work items are eligible for modernization funding;

(D) The amount of modernization funds requested represent the PHA's best estimate of the costs of the modernization program described in the final application;

(E) The PHA will comply with civil rights statutes, executive orders, and regulations, as applicable; and

(F) The PHA has complied with HUD regulations and requirements under the Flood Disaster Protection Act of 1973 or that such regulations and requirements are not applicable.

(e) *ACC amendment.* After HUD approval of the PHA's final application, the PHA shall enter into an ACC amendment or an ACC to obtain modernization funds.

§ 868.8 Modernization project.

(a) For purposes of financing modernization, each modernization program approved for a PHA shall be treated as a separate modernization project. The modernization project may include improvements to one or more projects. Improvements to a single project may be included in more than one modernization project.

(b) HUD and the PHA shall enter into an ACC amendment, in a form prescribed by HUD, for each modernization project. The ACC amendment shall provide for the payment of annual contributions sufficient to amortize the modernization cost over a period of no more than 20 years, and shall require low-income use of the housing for not less than 20 years (subject to sale of homeownership units in accordance with the terms of the ACC).

§ 868.9 Contracting requirements.

(a) *Compliance with State, tribal, and local law.* The PHA shall comply with State, tribal and local laws applicable to bidding and contract award.

(b) *PHA agreement with architect/engineer.* The PHA shall submit the proposed agreement, if any, with an architect/engineer for technical services to the appropriate HUD office for review and approval before executing the agreement.

(c) *Bidding documents.* The PHA shall submit complete plans, drawings, specifications, and other related documents for each proposed modernization contract over $50,000 to the appropriate HUD office for review and approval before inviting bids. If the Director of the HUD office with which the PHA normally transacts its low-income housing business determines that an individual PHA has not demonstrated satisfactory performance, the PHA shall submit bidding documents for each proposed modernization contract over $5,000.

(d) *Contract award.* (1) The PHA shall submit all documents relating to the proposed award of modernization construction and equipment contracts to the appropriate HUD office for review and approval before making an award where:

(i) The amount of the contract exceeds the amount included in the latest approved modernization program budget;

(ii) The bidder attempts to withdraw a bid, alleging a mistake; or

(iii) The PHA:

(A) Receives a single bid;

(B) Proposes to disqualify the low bidder;

(C) Proposes to reject all bids received; or

(D) Revises the contract documents for readvertising, as applicable under paragraph (c) of this section.

(2) In all other instances, the PHA shall make the award without HUD review and approval after the PHA Board of Commissioners or the designated PHA official has certified that:

(i) The bidding was conducted in compliance with applicable State, tribal and local laws and Federal regulations;

(ii) The award does not exceed the amount included in the latest approved modernization program budget;

(iii) The low bid has been accepted;

(iv) The award has been informally cleared with the appropriate HUD office to determine that the contractor is not on the Consolidated List of Debarred, Suspended, and Ineligible Contractors and Grantees; and

(v) The PHA has complied with the HUD-approved plan for the utilization of minority and female-owned business enterprises.

(e) *Contract changes and time extensions.* Except in an emergency endangering life or property, the PHA shall submit to the appropriate HUD office for review and approval all proposed contract changes that exceed the latest approved budget amount or change the approved scope of the work by adding new work items, deleting approved work items or lowering the quality of the work or materials and all proposed time extensions for causes beyond the contractor's control. This submission to HUD shall be made before issuing the proposed changes to the contractor.

(f) *Contract settlement.* Regardless of the amount of the contract, the PHA shall submit all documents for final payment of the contractor to the appropriate HUD office for review and approval before making the payment.

§ 868.10 Labor provisions.

(a) *HUD-determined wage rates.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, to all architects, technical engineers, draftsmen, and technicians employed by the PHA itself or by an architect/engineer or other contractor engaged by the PHA for a modernization program, and to all laborers and mechanics employed by the PHA itself or by a contractor engaged by the PHA in carrying out (1) Major Repairs as defined in § 868.2 of this part or (2) replacements, due to normal wear and tear, by items of substantially the same kind.

(b) *Davis-Bacon Act.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor, under the Davis-Bacon Act (40 U.S.C. 276a et seq.), to all laborers and mechanics employed by the PHA itself or by a contractor engaged by the PHA for modernization work or contracts over $2,000, except major repairs as defined in § 868.2 of this part or replacements due to normal wear and tear by items of substantially the same kind.

§ 868.11 Requests for modernization funds.

To request modernization funds against the approved modernization program, the PHA shall:

(a) Consult informally with the appropriate HUD office as to the amount of modernization funds needed for the time period in question, the immediacy of need, and the method of financing;

(b) Submit a request to the appropriate HUD office for only the amount of modernization funds needed for the time period in question and support the request with a written justification, in a form prescribed by HUD; and

(c) Submit the latest required progress reports under § 868.12(b) and § 868.12(c), unless the first required report is not yet due.

§ 868.12 Monitoring and evaluation.

(a) *On-site physical inspections.* The PHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether the work is performed by contract or Force Account Labor and with or without the services or an architect/engineer, to assure work quality and progress.

(b) *Progress reporting.* For each quarter until completion of the modernization program, the PHA shall submit, in a form prescribed by HUD, to the appropriate HUD office:

(1) A modernization quarterly progress report, showing the PHA's actual performance in comparison with its planned performance contained in the modernization work program, by work item for each project, including the planned and actual expenditures during the preceding quarter and cumulatively, and the work planned but not accomplished.

(2) An explanation, including the reasons for the deficiency and the corrective actions which the PHA has planned or taken, where the modernization quarterly progress report indicates:

(i) An overrun or underrun of 10 percent or more in actual cumulative expenditures in comparison with planned cumulative expenditures; or

(ii) Any work planned but not accomplished during any previous quarter.

(3) A narrative report, describing the PHA's actual performance in comparison with its planned performance contained in the modernization management plan, including the current status of each management work item and an explanation if no progress has been made.

(c) *Progress reporting for previously approved modernization programs.* Beginning with the quarter ending March 31, 1977, for each quarter until completion of the modernization program, the PHA shall submit, in a form prescribed by HUD, to the appropriate HUD office:

(1) A statement of modernization costs for each incomplete modernization program; and

(2) A summary report on the status of all modernization funds approved before July 1, 1974.

(d) *Construction reporting.* The PHA shall submit construction progress reports, on forms prescribed by HUD, to the appropriate HUD office.

(e) A report on the implementation of the plan for utilization of minority and female-owned business enterprises in the modernization program.

§ 868.13 Revisions of the modernization program budget.

The PHA shall not incur any modernization cost in excess of the total approved modernization budget. The PHA shall submit a revision of the modernization budget, in a form prescribed by HUD, to the appropriate HUD office for review and approval if the PHA plans (within the total approved modernization budget) to:

(a) Delete or substantially revise approved work items;

(b) Add new work items; or

(c) Incur modernization costs in excess of the approved budget amount for:

(1) A work item; or

(2) Any project.

§ 868.14 Revisions of the modernization work program.

The PHA shall submit a revision of the modernization work program, in a form prescribed by HUD, to the appropriate HUD office for review and approval where there is:

(a) A revision of the modernization program budget; or

(b) A determination by the appropriate HUD office that the PHA is unable to complete the modernization program within the two-year period because of:

(1) Circumstances beyond the control of the PHA; or

(2) Improper PHA administration of the modernization program.

§ 868.15 Completion of modernization programs.

Upon completion of modernization programs, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the appropriate HUD office for review, audit verification, and approval. If the audited modernization cost certificate indicates that excess funds have been approved, the PHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective action as HUD may direct. The PHA shall enter into an ACC amendment to reflect actual modernization costs or corrective action taken, where determined necessary by HUD.

§ 868.16 Effect on purchase price and amortization period.

(a) Promptly after HUD approval of the Final Application, the PHA and the homebuyer shall execute an amendment to the Homebuyer Agreement, reflecting an increase in the purchase price of the home and an extension of the purchase price amortization period in accordance with § 868.16 (b) or (c).

(b) For Turnkey III projects and for Mutual Help projects placed under ACC from March 9, 1976 or converted in accordance with 24 CFR 805.428:

(1) The amount of estimated modernization cost attributable to the home as shown in the HUD-approved Final Application, shall be added to the homebuyer's purchase price as initially determined (under 24 CFR 804.113(a) or 804.115(b) for Turnkey III projects, or under 24 CFR 805.422 (b) or (c) for Mutual Help projects).

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) be computed on the basis of the same interest rate as used for the current purchase price schedule.

(3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the foregoing provisions of paragraphs (b) (1) and (2).

(c) For Mutual Help projects placed under ACC before March 9, 1976, and not converted in accordance with 24 CFR 805.428:

(1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the unamortized balance of the portion of the project's development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved Final Application.

(2) The PHA shall furnish to the homebuyer a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the Minimum Loan Interest Rate specified in the ACC for the modernization project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the initial debt attributable to the home.

(ii) Multiply this amount by 25, round the result to the next higher number and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.

(iii) The purchase price for the unit shall be the sum of (A) the balance of the debt attributable to the home and (B) the amount remaining on the modernization schedule.

Issued at Washington, D.C., October 30, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Indian Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 805

[Docket No. R-79-599]

Indian Housing; Final Rule

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule incorporates amendments to the regulation for the HUD Indian Housing Program under the United States Housing Act of 1937. The amendments include changes in the procedures for development of the housing, changes in the procedure for providing Indian enterprise preference in IHA contracting, changes in Mutual-Help housing procedures, changes in the computation of required homebuyer payments and a provision for payment of operating subsidy under specified circumstances.

EFFECTIVE DATE: December 6, 1979.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; telephone (202) 755-7603. (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Thomas Sherman, Office of Public Housing and Indian Programs, Department of Housing and Urban Development, Washington, D.C. 20410; telephone (202) 755-5380. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A comprehensive regulation for the Indian Housing Program became effective on March 9, 1976. At that time, it was anticipated that amendments would probably be required on the basis of experience under the published regulation.

The changes incorporated in these amendments are the result of an extensive series of consultations with IHAs and other concerned Indian organizations, since early 1977. After successive working drafts of the amendments were circulated to these groups and to HUD Field Staff and their comments considered, proposed amendments were published in the Federal Register on January 11, 1979. The present amendments provide for important changes in the present regulation, reflecting the concerns of Indian Housing Authorities and of HUD during the period the regulation has been in effect. The Department recognizes that more changes may be needed in order to resolve more comprehensive or basic problems raised by the comments.

A total of 27 public and 2 internal comments were received. A number of these communications contained many detailed comments. Each comment has been carefully considered. The following is a summary of the principal comments received and the changes made to the proposed rule. Changes to the existing regulation, which were included in the proposed rule and are continued unchanged in the final rule, are explained in the preamble to the proposed rule.

Subpart A—General

1. Under § 805.101(a), one comment indicated that the IHA is not receiving technical assistance from HUD to the extent desired and needed. The HUD field offices are expected to provide technical assistance to the extent that and as promptly as their staff resources will permit. If the IHA feels that there is a serious deficiency in this regard, the matter may be brought to the attention of the Office of Indian Housing in the Central Office.

2. Several commenters requested the inclusion of provisions of other regulations which have been incorporated in this regulation by reference only. As stated in § 805.101(b), the Indian housing regulation does not "constitute a self-contained or complete statement of the HUD regulations and requirements affecting the development or operation of low-income housing projects of Indian Housing Authorities." In HUD's judgment, it would be impracticable to repeat all the other applicable regulations. It is recommended that each IHA obtain copies of all related HUD regulations and requirements from the appropriate HUD field office.

3. In response to comments on § 805.102, a definition of Preliminary Loan was added and the definition of Annual Contributions Contract was clarified.

4. Under § 805.103, and in other appropriate places of the regulation, it was suggested that the term "Mutual Help Homeownership Opportunity Program" be changed to "Mutual Help Homeownership Program." The word "Opportunity" is included in order to signify that the Mutual Help and Occupancy Agreement does not provide the occupant with actual homeownership until after the occupant has performed the obligations under the Agreement and has reached the point where he/she can finance payment of the purchase price and take title to the home. Accordingly, this suggestion was not accepted.

5. It was also suggested that the paragraph referring to the Section 8 Program should be expanded so as to enable an IHA to take over FmHA or FHA projects which are in default. The basic obstacle so far to the use of the Section 8 Program on Indian reservations has been the problem of obtaining private financing by an owner (whether it be a private owner or an IHA) for the construction or acquisition or rehabilitation of a Project. This is a problem which cannot be solved by changing language in this regulation.

6. Comments on §§ 805.104 and 805.202 indicated that there was a need to clarify the possible involvement of the IHS and BIA in connection with privately-owned sites where the legal responsibility of those agencies is unclear. Accordingly, a sentence was added referring to § 805.208(f) which clearly states that in the case of Projects for which no financial assistance is required to be provided by IHS or BIA, their participation shall be encouraged. In any individual case where there is a question as to whether the financial assistance of those agencies is required, the matter must be resolved administratively at the operating level.

7. Under § 805.105, it was suggested that the reference to the Indian Civil Rights Act should be followed with a quotation of the actual language of the Act. Consistent with the practice which has been followed in this regulation with reference to other related legislation, it was determined that it would be best for those who are interested to obtain a copy of the legislation itself.

8. Several commenters recommended that HUD incorporate in § 805.106 a comprehensive Apprenticeship and Training program. This cannot be done because responsibility for such programs is vested in the Department of Labor. The HUD Office of Labor Relations will be requested to explore this recommendation.

9. Some commenters recommended that the HUD Indian Housing Program be exempt from Davis-Bacon wage rates because they contribute significantly to the high cost of Indian housing and bear little relationship to wage rates prevailing on reservations. The use of Davis-Bacon wage rates is a statutory requirement, thus HUD has no authority to grant an exemption. The Department of Labor has the legal responsibility for determining proper Davis-Bacon wage

rates. The question of the relationship between the Davis-Bacon wage rates and those prevailing on reservations is an administrative matter which should be taken up through HUD with the Department of Labor.

10. Several commenters suggested that because some architects "work an area" with duplicative designs and specifications, § 805.107(d) should be modified to allow IHAs to negotiate for professional services at lower rates. The requirement in § 805.107(d) for payment of not less than the prevailing wage rates for architects and other technical personnel is statutory and, therefore, cannot be changed. However, this Section only controls the wage rates to be paid for the work involved. It does not control the amount of the fee to be paid for the architect's services since the amount of the fee is also affected by the amount of work required. Where an architect proposes to use duplicate plans and specifications, it is obvious that substantially less work will be required. In such case, the IHA is free and indeed is expected to negotiate for a lower fee for the services to be performed without any conflict with § 805.107(d).

11. In connection with § 805.107(e), it was stated that the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 requires the payment of relocation payments to persons displaced by any public body such as an IHA regardless of whether the IHA is or is not a state agency. This statement is not in accord with the language of that Act. Section 210 of the Uniform Act, which requires relocation payments to persons displaced by Federally-assisted programs, refers to "any grant to, or contract or agreement with, a *state agency*, under which federal financial assistance will be available to pay all or part of the cost of any program or project * * *" (*underscoring* supplied). For this reason, in those cases where an IHA is a tribal agency but not an agency of the state, the Uniform Act is not literally applicable.

12. In connection with § 805.108, it was suggested that the Section be expanded to include non-Federally-recognized bands or communities who organize a non-profit entity to develop and manage Indian housing. The Department is not in a position to make such a general rule because any such cases must be evaluated on the particular facts and laws applicable to them. If there be such a specific case on which a determination is desired, the matter should be submitted to HUD together with all the applicable documentation.

13. Under § 805.109(c), a question was raised as to why the basic ordinance establishing an IHA must be approved by the Department of the Interior. This is an administrative requirement which has been a feature of HUD-BIA cooperation in the Indian Housing Program since its beginning in 1961.

14. Under § 805.109(d), it was pointed out that the standard form of ordinance may require modifications for tribes which are not organized under the Indian Reorganization Act of 1934. Section 805.109(d) does provide for modifications to be made with specific HUD approval.

15. There were comments concerning compensation for IHA commissioners and comments for payment of operating subsidy for MH Projects. Basically the same points were discussed in the Preamble to the proposed regulation and the provisions in question are contined without change in the final rule. No further explanation is deemed necessary.

Subpart B—Development

16. Under § 805.202, it was suggested that the language should be revised to permit exchange of funds or the undertaking of work items normally the responsibility of another agency, where this is necessary. Such arrangements should be possible under § 805.214(e) which permits Development Cost to include cost of facilities or improvements to be provided by other agencies if "such costs are offset by other parties assuming costs that would otherwise be included in the development cost." For clarification, we have added in § 805.202 a reference to § 805.214(e).

17. Several commenters urged that the regulation be amended to permit the IHA to require Turnkey developers to furnish performance and payment bonds as protection in the event that a developer fails to complete a project. Other commenters felt that IHAs should not impose such a requirement because, under the Turnkey method, completion is the legal responsibility of the developer and the financial risk is on the developer and/or the construction lender. In fact, in many cases bonding is required by the construction lender. Accordingly, § 805.203 (b) and (d) have been modified to state that an IHA may require a Turnkey developer or a modified Turnkey developer to furnish assurance in the form of 100 percent performance and payment bonds or other security as may be acceptable.

18. Several commenters objected to the provision that an IHA may use the Force Account method on new construction only with the specific approval of HUD's Assistant Secretary for Housing (§ 805.203(f)(2)) rather than the local HUD Area Manager or Regional Administrator. This requirement has been retained because it has been HUD's experience that when an IHA undertakes construction of a new project with its own employees (the Force Account method) it is difficult to insure against delays, defects in material and workmanship, and cost overruns. Accordingly, it is HUD's view that the Force Account method should be used only in unusual and controlled circumstances.

19. A few commenters also objected to the provision that the tribe agree to cover any cost overruns incurred in the development of the Force Account project. This provision is deemed essential in order to provide assurance of completion by a financially responsible entity within the applicable cost limits.

20. Two commenters expressed objection to the requirement in § 805.203(g) that a public advertisement for bids or proposals include the applicable prototype cost limit and the maximum total contract price. The objection was based on the ground that supplying this information would reduce competition and, therefore, drive up the cost of housing. The proposed provision has been retained for the following reasons. Under the old system, with the cost limits known only to the IHA and HUD, contractors submit bids which are excessive. This leads to confusion and uncertainty as to whether there may be negotiation with the low bidder or whether all bids must be rejected and the Project readvertised; this situation leads in turn to delays and cost escalations. Under the new system, if a contractor finds that the figures are over the listed limits, the contractor will be encouraged to go through the figures again looking carefully for any excess. If the contractor finds that he/she will be unable to meet the cost and price limits, the contractor can drop out of the process rather than make a submission which will be unacceptable.

As for the possibility of reduced competition, including the cost limits in the advertisement will enable each potential bidder to determine whether he/she is interested in submitting a bid within the limits. Those potential bidders who are not interested in bidding within the limits would not be acceptable bidders in any case. Those who are interested in bidding within the cost limits may be tempted to bid as close to the cost limits as possible. On the other hand, however, they will be encouraged to bid as low as possible in

order to ensure winning the award. On the whole, it is our judgment that the advantage to be gained by this new provision will outweigh any possible disadvantages.

21. Several commenters discussed the provision in § 805.204(a)(2) that where an invitation for bids or proposals is open to both Indian and non-Indian enterprises, the award shall be made to an Indian enterprise if its bid does not exceed the lowest price by more than one percent. The comments were to the effect that the margin should be greater than one percent. Experience has shown that realistic Indian preference can best be provided by invitations which are limited to Indian enterprises, where this is possible, and that the use of a price differential where the invitation is open to Indian and non-Indian enterprises is impracticable. Accordingly, § 805.204(a) has been revised to make it clear that any IHA desiring to provide Indian preference may do so by determining in advance whether there are qualified Indian enterprises who are interested in responding to an invitation for bids or proposals and, where there are such, by inviting bids or proposals from Indian enterprises only. Where it has been determined that there are no qualified Indian enterprises who would be interested, the IHA would issue an open invitation for bids or proposals with no provision for price differential between Indian and non-Indian enterprises.

22. Section 805.206(a) stated that where the provisions for necessary local government cooperation are not contained in the tribal ordinance or other enactment creating an IHA, the IHA shall submit an executed cooperation agreement. In response to a comment, we added language to indicate that this cooperation agreement should be submitted with the application, if possible, but, in any event, prior to ACC.

23. One commenter recommended that HUD notify the IHA within 10 working days if an application is incomplete. Section 805.206(b)(1) has been modified to include a provision that in the event of an incomplete application HUD will notify the applicant of the documents missing or incomplete within 10 working days of receipt of the application.

24. Several commenters indicated that there was a need to clarify the situations in which IHA Projects are subject to Office of Management and Budget Circular A-95 (see § 805.206(b)(3)). Additional information is contained in OMB Handbook *A-95: What It Is. How It Works.* Accordingly, we have added a reference to this Handbook.

25. A commenter suggested that § 805.207(b)(2) be expanded to provide guidance on what number of units HUD considers to be too small for development of adequate administrative capability. We do not believe it is feasible to do this. The proper size of a project depends on a variety of factors which in our judgment should not be formalized in the regulation. Project size instead should be decided upon an individual basis as a result of consultation between the IHA and the HUD field office.

26. Section 805.208(a) has been modified to provide that the process of inter-agency and tribal cooperation and coordination shall begin insofar as is practicable with the preliminary planning and preparation of the application, but, in any event, as soon as prospective sites have been identified.

27. Section 805.208(c) provided that the IHA shall submit to HUD an agreement between it and the tribal government describing the funds, actions, and services to be provided by the BIA and the IHS. In response to a comment indicating that the IHA would not be in a position to submit such an agreement so far as the BIA and IHS are concerned, the provision has been modified to indicate that the IHA shall furnish the agreement with respect to those funds, actions, and services which "on the basis of information furnished by the BIA and IHS are expected to be provided by those agencies."

28. In connection with §§ 805.208 (d) and (e), questions were raised as to the frequency of project coordination meetings, where they should be held, whether minutes would be kept, etc. These are details which should be determined by the parties at the first coordination meeting which is required to be held pursuant to § 805.208(d).

29. The proposed amendment in § 805.209(a), authorizing preliminary loans up to 3% of the estimated total Development Cost, was the subject of favorable comment. One comment, however, expressed reservation concerning the provision prohibiting the use of development or operating funds of other Projects to cover costs for a Project not yet under ACC. In view of the entire pattern of liberalization on the matter of preliminary loans, it is felt that the strict prohibition is justified and must be adhered to.

30. In response to a comment, a sentence has been added to § 805.209(a) stating that the preliminary loan may also include a portion of counseling funds for use in accordance with a HUD-approved counseling program.

31. Sections 805.211 (b) and (c) provided that the IHA shall not, without HUD approval, enter into any contract in connection with the development of a Project as well as a provision that the IHA shall not award a construction contract for the Project until the prospective contractor has demonstrated the technical and administrative capability to perform contract work of the size and type involved within the time provided under the contract. There were a few comments to the effect that the requirement of HUD approval of development contracts is too restrictive and that IHAs should make the determination on capability of the construction contractor. The requirement for HUD approval of development contracts is in accordance with the standard rule for the entire public housing program, Indian and non-Indian, and is not considered to be unduly restrictive. It should be noted that this requirement relates primarily to such basic contracts as the construction contract, architectural-engineering contract, and the legal services contract. Similarly, the determination of administrative and financial capability of the construction contractor is so basic and of such importance that HUD's participation in this decision is deemed essential.

32. In connection with § 805.212, there were several comments indicating that the design standards set forth would discourage designs reflecting local traditional or cultural styles or patterns. Section 805.212(a) sets forth a sufficient number of general standards which, in our judgment, would permit an IHA to incorporate such features in the design provided it can be accomplished within the applicable cost limitations. Attention is especially directed to (1) the express statement that the HUD Minimum Property Standards, although to be taken into account, shall not be controlling, and (2) the inclusion, as one of the factors, of "the maintenance of quality in architecture to reflect the standards of the community." It should be also noted that the responsibility for initiating the design is with the IHA (see paragraph 36).

33. Section 805.212(b) states that the IHA shall prepare and submit to HUD a basic outline for a minimum-acceptable house. We have added language to indicate that this submission is to be made as part of the Development Program.

34. Another comment questioned whether the submission of a "basic outline" would provide HUD with enough information for cost estimate purposes. We have, therefore, added language stating that the basic outline shall be in sufficient detail to enable HUD to determine whether the Project

can be constructed within the applicable cost limitations.

35. In connection with § 805.213, a number of comments were made concerning the administration of the prototype cost system, particularly the problem of having published prototype costs which are reasonably up-to-date. The administration of prototype costs is governed by other regulations, which are currently being reviewed. These and other similar comments are being considered in connection with that review.

36. Section 805.213(b)(2) has been clarified to indicate that the prototype design is furnished to the IHA for assistance in the preparation of the basic house design under § 805.212(b) and that elements of the prototype design may be, but are not required to be, incorporated in the basic house design. This Section has also been modified to give the IHA an opportunity to request, with supporting justification, a modification of the prototype design. This annual opportunity to request prototype design modification can potentially increase IHA's housing design flexibility. For example, IHAs who believe that the HUD prototype does not match the culturally-distinct housing preferences on their reservation may not request modification, but with supporting justification.

37. Some commenters suggested that § 805.214(c) be revised to permit the cost of driveways to be up to 3% of the Dwelling Construction and Equipment Cost (DC&E) of a Project instead of 1½% of the DC&E, as is presently provided for in the regulation. Investigations into the issue indicated that confusion existed as to the meaning of the word "driveway." Roads providing access to homes in isolated areas are access roads, not driveways, and are not intended to be provided for in § 805.214(c). The issue of funding for access roads will be discussed by the recently-formed Interagency Working Group (Interior, HUD and HEW).

Investigations further indicated that the cost of driveways within the boundaries of sites, which in the case of a single family detached dwelling may not exceed one acre, was sufficiently covered in most cases by the current regulation. Moreover, the regulation provides for exceptions to 1½% of the DC&E when this is specifically justified. However, § 805.214(c) was modified to authorize a minimum allowance of an average of $500 per dwelling unit when this amount is greater than 1½% of the DC&E.

38. In response to comments, § 805.214(i) has been strengthened and made more explicit by providing that the Development Cost Budget submitted with the Development Program for a Rental Project *shall* include an estimated amount for costs of a HUD-approved tenant counseling program and that the counseling program shall be subject to the appropriate provisions of § 805.429.

39. A few commenters recommended that § 805.215 be expanded to address solar, wind or other alternate fuel systems. As a result of these comments, the language of this Section has been modified to carry out the recommendations.

40. In connection with site selection, a number of commenters objected to the requirement that there be due regard for regional and local plans, as an infringement on tribal sovereignty (§ 805.216[a]). Since the regulation provides only that "due regard" be given to such plans and contains no requirement that site selection must conform to regional and local plans, we do not believe that any change in the provision is necessary.

41. In response to one comment from the BIA, § 805.217(b)(1) has been amended to specify that the BIA may give concurrence for final site approval conditioned only upon subsequent execution of site leases and right-of-way easements. This conditional BIA concurrence will be sufficient for purposes of HUD final site approval and execution of ACC.

42. In connection with § 805.218(b), the question was raised whether a family may sell its site to the IHA in lieu of donating it. The site is not actually donated because the family receives credit for a Mutual-Help contribution based upon the value of the site. If a family is to become a Mutual-Help participant in a home built on a site that it owns, the regulation would not permit a sale but only use of the site with a corresponding Mutual-Help credit.

43. Under § 805.219, it was suggested that there should be an appeals procedure to enable an IHA to appeal from a low appraisal. Appraisals are made by professional appraisers who support their appraisal with an appraisal report. If an IHA is of the opinion that an appraisal is unduly low, it may present the issue to the HUD field office and if the circumstances so warrant, another appraisal can be made.

44. In connection with § 805.219(c)(4), it was suggested that HUD eliminate the two-thirds limitation on the value of leased sites or delegate authority to the field offices to grant waivers. Our experience indicates that cases affected by this two-thirds rule are few and far between, and we have determined that it would be best for each such case to be submitted to Headquarters with the appropriate justification.

45. Also, under § 805.219(c)(4), it was suggested that the minimum $500 value below which appraisals are not required should be increased. Accordingly, this cutoff amount has been raised to $750.

46. In the same connection, a question was asked whether this cutoff value refers to the unimproved value of the site and it was suggested that if it does not, the amount should be increased to $1,000. The cutoff amount refers to the value of the site whether improved or unimproved. We believe that the cutoff amount of $750 is appropriate because the effect of the presence or absence of improvements and all other relevant factors can best be evaluated by an appraisal.

47. With respect to § 805.220, there were a few comments on the standard of financial feasibility of rental Projects which seem to have been addressed to the language of the old regulation. These comments have been taken care of by the proposed amendments.

48. There was a comment to the effect that the Performance Funding System does not reflect all the relevant costs and that HUD should reconsider its applicability to the Indian Housing Program. This problem is receiving Departmental consideration.

49. Sections 805.221 (b) and (c) have been modified in response to a BIA comment. As modified, §805.221(b) provides that HUD shall invite BIA to send its representative on site visits for the purpose of reviewing the street construction quality control and progress; and the modified §805.221(c) provides that when the BIA will have maintenance responsibility for any part of the Project after completion, the BIA shall be invited to participate in the final inspection in order to determine whether the streets, curbs, gutters, and drainage conform to the approved plans and specifications. This paragraph also provides that any deficiencies shall be corrected before final settlement with the contractor.

50. Under § 805.222, a question was asked as to what is the source of funds for the inspections that are required to be made during the first year after completion of the housing. Under the last sentence of this section, it is stated that the cost of making all the inspections shall be included in Development Cost.

51. Section 805.223 provides that where development funds are used to correct deficiencies, this shall not result in an increase in the Homebuyer's purchase price. The question was asked how this would be achieved in the case of the old Mutual-Help projects where

the Homebuyer's purchase price is based upon the amount of Project debt attributable to the home. This is an accounting matter which can appropriately be dealt with in the Handbook.

52. In connection with § 805.223(b), a comment objected to linking correction of deficiencies in construction, design or equipment with family housing payments, and recommended that the entire second sentence of paragraph (b)(2) be deleted. The sentence in question merely states, "However, before approving work on a MH home for correction of deficiencies the Field Office may review the record of the Homebuyer's compliance with the MHO Agreement, and may require the IHA to reach an agreement with the Homebuyer for the correction of significant non-compliances." In our judgment, HUD would be remiss in its responsibility for the proper utilization of government funds if it did not at least authorize the field office to review the record of the Homebuyer's compliance and require the IHA to reach an agreement with the Homebuyer for the correction of significant non-compliances before investing more government funds in the Mutual-Help home of the Homebuyer. This procedure does not preclude, and indeed would encourage, the giving of adequate consideration to the complaints on the part of a family who may have withheld monthly payments because the home was deficient in one or more respects.

53. Several commenters suggested changes to various provisions of the Interdepartmental Agreement which is contained in Appendix I of these Regulations. Since the Departments of Interior and HEW are also parties to this Agreement, HUD cannot unilaterially modify it. Comments and issues relating to the Agreement will be considered by the recently-formed Interagency Working Group (Interior, HUD and HEW).

Subpart C—Operation

54. One commenter recommended that there be no income limits associated with participation in HUD Indian housing programs because the trust status of Indian land makes it difficult or impossible for even a higher-income family to get a loan for a house. These regulations apply to Indian area housing on nontrust land as well, but, in any case, income limits have not been removed because they are required by the Act. However, the amended regulation (§ 805.302(a)) responds to the problem by expressly authorizing IHAs to set income limits up to the maximum permitted by the Act; to give consideration to any "limitations in the local private housing market (such as an insufficient supply of standard private housing or the unavailability of mortgage financing on trust or restricted land)" and, where decent housing is not otherwise being provided "even for those of relatively high income," to set income limits high enough to meet those needs.

55. The proposed rule provided that for purposes of "very low income" requirements the standard should be the incomes of "Indian families in the area as determined by HUD" (see § 805.302(b)(2) (i) and (iv)). It was suggested that this be changed to the incomes of "Indian families in the Indian area." This recommendation has been adopted except for the limitation to Indian families. Under the final rule the standard is the incomes of "families in the Indian area."

As indicated, the suggestion that these income determinations be based on the incomes of Indian families only has not been adopted. The regulation is designed to meet the low income housing needs in Indian *areas*. Consistent with this, the income determination should be based on the incomes of families in each Indian area without distinguishing between Indian and non-Indian families in that area.

56. A commenter also stated that the provisions concerning occupancy by families of a broad range of incomes, including at least 20% of very low income, are incompatible with the minimum payment requirement for MH Projects. This problem should be solved by the qualifying language, "who would be qualified for admission to the type of project (Rental or Mutual-Help)," as contained in § 805.302(b)(2)(i), and the similar language, "whose incomes would qualify them for admission to a Mutual-Help project," contained in § 805.302(b)(2)(iv). Under this language, families whose incomes are too low to enable them to meet the minimum obligations of a MH Homebuyer are excluded from consideration in applying the broad range of income and 20% very low income requirements.

57. In connection with § 805.303, it was suggested that a sentence be added permitting the IHA to charge a nominal fee to cover reproduction expenses for tenant or Homebuyer requests. This is a matter to be determined under the grievance regulations.

58. Under § 805.304 it was suggested that some mention should be made with regard to the basis for determining the required monthly payments for those Mutual-Help Projects that were placed under ACC prior to March 9, 1976. Monthly payments for these Projects are determined in accordance with the applicable Mutual-Help and Occupancy Agreements. Consideration is being given to including appropriate additional information in the Handbook.

59. Section 805.305 provides that each IHA shall adopt regulations with certain provisions including "(g) Procedures for obtaining assistance from the tribal government." One commenter indicated that the meaning of this provision is unclear. Accordingly, it has been modified to refer to tribal government assistance in accordance with the provision of the required tribal ordinance that "the powers of the Tribal Government shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations including action through the appropriate courts."

60. In connection with § 805.306, a commenter referred to paragraph 48 of the Preamble to the proposed regulation and stated that the last part needed clarification. The problem is due to a typographical error in the published text. The paragraph in question should have read without the word "and," as follows:

> A new provision which would have required that any improvements to rental, Turnkey III or MH units must be performed under HUD-approved plans and specifications, even if financed by non-project funds, has not been included because minor improvements by homebuyers would be delayed and excessive paperwork and administrative time would be required.

61. In connection with § 805.306(d), it was stated that under Section (5)(c) of the Act, HUD is obligated to provide an IHA with operating subsidy to enable it to pay for necessary maintenance and, therefore, that the provision requiring the IHA to take appropriate steps to assure performance of the Homebuyer's Agreement should be deleted.

This issue was raised by previous comments and was discussed in paragraph 16 of the Preamble to the March 9, 1976 regulation. In addition to that discussion, it is appropriate to point out that, in the case of a Mutual-Help Project, the Homebuyer must be of sufficient income to be able to make the minimum monthly payment, provide the necessary maintenance of the home and pay for the utilities. This is basic to the concept of meeting the requirements of homeownership. This does not ignore the housing needs of those families who are of such low income that they cannot afford to do this because the housing needs of such families can be met through the IHA rental housing program.

62. The question was also raised as to how the necessary maintenance can be provided and paid for in a Mutual-Help

Project when all the Homebuyer's reserves have been exhausted. This is a difficult operating problem which will be given further consideration.

Subpart D—Mutual-Help Homeownership Opportunity Program

63. Section 805.404(c)(2) stated that the dollar limitation on the cost of purchasing home sites would be too restrictive for urban development. The last sentence of this paragraph of the regulation provides sufficient opportunity for presenting and obtaining HUD approval for higher acquisition costs where this is justified.

64. Several commenters suggested that the proposed cost limit for purchased MH homesites (see § 805.404(c)(2)) be increased from 8.75% of Dwelling Construction and Equipment (DC&E) cost. This suggestion has not been followed because it is felt that the 8.75% limit is adequate for most cases. For those situations where it is not, special field office approval or a waiver by Headquarters may be requested.

65. One commenter recommended that the provision in § 805.404(c)(2) be changed so that the cost limit would be 8.75% of the DC&E or $1,500, whichever is higher, because there are cases where 8.75% of the DC&E cost allocable to a dwelling unit or to each of a group of dwelling units is less than the $1,500 average MH contribution required. This recommendation has been accepted.

66. A few commenters recommended that alternate sites and Homebuyers be included in each Project in order to avoid delay in the event that one or more homesites or Homebuyers are later dropped. The regulation does not prohibit an IHA from having available alternate Homebuyers or sites. However, paragraph (e) of § 805.404 has been revised to state that in order to minimize delay to the Project in the event of the withdrawal of a selected Homebuyer or an approved site, the IHA should have available a reasonable number of alternates. The paragraph also states that no substitution of a site shall be permitted after final site approval "unless the change is necessary by reason of special circumstances and only with HUD approval of (i) the substitute site and (ii) a showing that the change will not unreasonably add to the cost of the Project."

67. Under § 805.406, there were comments to the effect that operating subsidy should be provided for families of very low income who cannot afford to pay the Administration Charge of a Mutual-Help Project. In keeping with the concept of homeownership and the basic principle of the Mutual-Help Program, operating subsidy is authorized only on the special grounds stated in § 805.311. Families who cannot afford to meet the requirements of Mutual-Help may be accommodated in rental Projects of the IHA.

68. There was a suggestion that the Notification of Selection of a Homebuyer should be issued within seven working days of final approval of the site. This is a detail which the Department feels is best left to Handbook procedures.

69. There was a suggestion that the regulation should allow single individuals to qualify for Mutual-Help even though they be non-elderly or non-handicapped. This suggestion could not be accepted because the matter is governed by the statute.

70. It was pointed out that a family's eligibility status may change from the time it first files an application until the family executes the Homebuyer Agreement. To clarify this matter, § 805.406 has been amended to state that the Notification of Selection will be sent to the family after final approval of the site and after the form of Mutual-Help contribution has been determined. This notification will, among other things, indicate when the Homebuyer Agreement will be executed and that the family's eligibility will not, thereafter, be subject to reverification (see paragraph 74 below).

71. Some commenters felt that where sites contributed by Homebuyers have a greater value than sites contributed by the tribe or other Homebuyers, pooling should not be required among the two groups of Homebuyers. In keeping with the principle of Mutual-Help, it was determined that no charge should be made for this type of case.

72. Where some Homebuyers contribute sites while sites for other Homebuyers must be purchased, some commenters felt that the Homebuyers who contribute sites should not be required to share their land credit with Homebuyers who have no land contribution at all. Accordingly, § 805.408(c)(2) has been revised to provide that in such cases the IHA, after consulting the Homebuyers, may (1) distribute the MH credits based upon sites contributed by Homebuyers equally among those Homebuyers in the Project, and (2) distribute the MH credits based upon sites, if any, contributed by the tribe equally among all the other Homebuyers in the Project.

73. In response to several comments, § 805.407(b) now provides that the notification to a family of its selection shall include a statement of approval of the form of the MH contribution proposed to be provided by or on behalf of the family and a statement that the family will be advised at a later date of the time and place for training activities.

74. This Notification of Selection will also contain a statement that the family's eligibility shall be subject to verification at the time of execution of the MHO Agreement and will not, thereafter, be subject to reverification. Comments indicated that there was a need for a final determination of family eligibility at the earliest possible stage. It was decided that this final determination should be made at the date of the execution of the MHO Agreement.

75. With respect to § 805.409(a), which deals with the procedures where a selected Homebuyer drops out from the Project, a comment indicated that flexibility in arriving at suitable substitute arrangements is needed. We agree and we think that sufficient flexibility has been included in the language of the paragraph. We will, however, be open to further specific suggestions and to consideration of waivers where specific justification is furnished.

76. Under § 805.409(b), a comment indicated that there may be need for an adjustment of the contractor's price when a selected Homebuyer drops out. Where a Homebuyer who had agreed to provide a work contribution drops out and no substitute can be obtained to provide an equivalent contribution, the contractor would be entitled to an appropriate increase in the price payable to the contractor.

77. One commenter asked what the incentive was for a Homebuyer to complete the required MH work contribution when the contractor is mandated to complete the project. Section 805.410(e) (2) and (3) provide that if the Homebuyer does not satisfactorily complete the MH work contribution, the contractor may call upon the IHA to terminate that Homebuyer's MHO Agreement and that if the contractor furnishes sufficient proof to the IHA of the nonperformance of the Homebuyer, the IHA *shall* terminate the MHO Agreement. This should provide adequate incentive for the Homebuyer.

78. Another commenter questioned whether the contractor would be compensated in the event that a Homebuyer's MHO Agreement was cancelled and the selected successor Homebuyer is not able to provide an equivalent MH work contribution. Section 805.410(e)(3) has been modified to provide that, while there would be no increase in the Total Contract Price, an appropriate adjustment of the price

payable to the contractor should be made.

79. Several commenters noted that there are costs to the contractor associated with the development of an MH Project which are not accounted for in the TDC. The comments specifically mentioned increased supervision and recordkeeping costs (see § 805.410), and increased workmen's compensation and insurance costs (see § 805.413). It is recognized that these costs are encountered in an MH Project. It is assumed, however, that the contractor would also have recognized these costs and reflected them in the bid or proposal. It is no more feasible to allow an increase in price when the contractor contends that the actual costs are greater than anticipated than to require a reduction in price where the actual costs are believed to be lower than anticipated.

The reason is that we are dealing with a lump sum contract and the amount of costs "anticipated by the contractor" for any particular category of expense cannot be known with certainty to anyone other than the contractor him/herself. Moreover, higher costs in some categories may be offset by lower costs in other categories. To open up the issue of the contractor's costs in all categories would be totally incompatible with the concept of the lump sum price contract.

80. In connection with § 805.411, which deals with cash contributions by Homebuyers, the question was raised as to whether this has any effect on the contractor's contract price. Where a Homebuyer agrees to make a contribution in the form of cash payments to the IHA, rather than by way of work under the construction contract, there is that much less of a work contribution. Consequently, the price payable to the contractor is increased to that extent.

81. In connection with §805.412, it was suggested that where a Homebuyer's Mutual-Help contribution takes the form of materials or equipment, the regulation should make it clear that the materials or equipment meet the standards that would otherwise be applicable. This suggestion has been adopted.

82. In connection with § 805.413, it was suggested that when a prospective contractor wishes to interview the selected Homebuyers, this be done as arranged by the IHA. This suggestion has been adopted.

83. With respect to § 805.414, which deals with the disposition of contributions if a Homebuyer drops out before date of occupancy, a comment stated that the Section should be rewritten taking into consideration Indian land status, particularly allotments and undivided interests. This provision has been in effect since March 9, 1976 with no problems that we know of. The comment is in very general terms. If there is a specific suggestion, we would be pleased to consider it.

84. With respect to § 805.416(a), which permits an IHA to establish an upper limit on Homebuyer payments of no less than the sum of Administration Charge and the monthly debt service amount shown on the homebuyer's purchase schedule, there were suggestions to permit a lower ceiling based on comparable rents or based upon the Section 8 fair market rents. The formula in the regulation is designed to assure that where the Homebuyer's income is high enough, he/she should make a payment which would reduce the HUD subsidy to zero. Even if this payment should exceed so-called comparability, it is not inappropriate because the additional dollars being paid by the Homebuyer are added to his/her equity so that the Homebuyer can then acquire title at an earlier date.

85. A few comments were also made to the effect that the $300 deduction allowed on account of minors should be increased. This is a matter determined by provisions of the Act and the other regulations which implement those provisions.

86. Another comment was made that an upper limit on monthly payments should be permitted for those of the lowest income. In fact, there are provisions to that effect because the IHA may use a percentage of income as low as 15% and, of course, if a family's income is very low the percentage amount would automatically be very low. Presumably, the problem arises where the family income is not high enough to enable the family to pay the minimum payment for a Mutual-Help Project. The answer for such cases is that the housing needs of such families should be met through the rental program.

87. One commenter stated that a Homebuyer's MEPA should be available to the Homebuyer for making necessary repairs. We do not believe that the MEPA should be routinely available for such purposes because its basic purpose is for acquisition of home ownership. However, § 805.416(a)(2)(i) provides that where a Homebuyer has failed to perform his/her maintenance obligations and the IHA determines that for this reason there has been a breach of the MHO Agreement, the IHA shall require the Homebuyer to agree to plan to cure the breach and assure future compliance. This paragraph has been modified so that when a Homebuyer is doing corrective work pursuant to such an agreed plan, he/she will be permitted to use the MEPA as may be necessary. A similar change has been made in § 805.416(a)(2)(ii) which provides for corrective action where the IHA determines that the condition of the property creates a hazard to the life, health or safety of the occupants, or that there is an immediate risk of serious damage to the property if the condition is not corrected.

88. One commenter pointed out that a Homebuyer may be faced with items of maintenance he/she knows little or nothing about with few, if any, local repair shops to turn to. This is an operating/management problem which should be met by the IHA. The IHA should explore the feasibility of maintaining on its staff one or more general maintenance mechanics or negotiating an open contract for such services on call, and maintaining on hand a stock of selected parts and materials in order to furnish Homebuyers with advice, parts and, as necessary, repair services at cost. This problem will be dealt with more fully in the Handbook.

89. One commenter asked if the use of the word "parents" in § 805.416(c)(1) was meant to exclude grandparents from the list of those people who could be designated as Mutual-Help occupants in a home without the written approval of the IHA. In response to the comment, the word "parents" has been changed to "forebears."

90. In connection with § 805.419, it was suggested that the Administration Charge should not include any items for which HUD provides operating subsidy. This suggestion has been adopted.

91. In connection with § 805.420, concerning the operating reserve, we received the following comments:

—Clarify what may be included in the reserve;
—Change references to Initial Operating Period because that term applies only to the rental program;
—The provision for initial contribution to the reserve of $2.00 per unit month is arbitrary;
—The amounts of the contribution should be established only with the Homebuyer's consent; and
—HUD should fund the reserve with operating subsidy.

After considering all these comments, the following changes have been made:

—The regulation states that the reserve must cover the amounts needed for insurance premium plus the estimated needs for working capital and other purposes.
—The reference to Initial Operating Period has been changed to the period of the first operating budget.

—The reference to $2.00 per unit month has been deleted leaving the amount to local determination.

The suggestion that HUD fund the reserve out of operating subsidy was not accepted because the reserve is considered as a supplementary source for administration expense. The operating subsidy policy is as stated in § 805.311.

92. A commenter suggested that the MH contribution should be used as a downpayment, that is, to reduce the purchase price of the home at the front end. Under the regulation (see § 805.421), the MH contribution is used to establish a Homebuyer reserve and is ultimately used to reduce the purchase price when the Homebuyer is otherwise eligible to acquire title.

The Homebuyer's reserve, which is established from the MH contribution, serves a double purpose. First, it serves as security for performance of the Homebuyer's obligations. Second, the reserve, if not drawn upon to pay any of the Homebuyer's obligations, remains intact and is used to reduce the amount to be paid to acquire homeownership.

By providing security for performance of the Homebuyer's obligations, the MH contribution makes it unnecessary to include the cost of maintenance in the Administration Charge. This permits a lower minimum monthly payment than would otherwise be necessary and, in the case of those Homebuyers of relatively higher income, it permits that much more of their monthly payments to be used for homeownership equity.

It should be noted that the use of the MH contribution in this manner does not result in any higher monthly payment than if it were used as a downpayment at the front end, nor does it result in any longer period for total amortization of the purchase price.

93. One commenter suggested that § 805.421(b)(3) be modified so that all funds paid into the Homebuyers' MEPAs or VEPAs would be invested promptly in an interest-bearing account instead of being withheld to meet the estimated 90-day expenditure requirements. This suggestion has been adopted.

94. Some comments were to the effect that there are circumstances under which it would be more equitable to use a different method for apportioning Development Cost among the Homebuyers than the method prescribed in § 805.422(b). Accordingly, language has been added to indicate that an alternative method of apportioning the amount determined by Step 1 of § 805.422(b)(1) may be used if the alternative method has been made a part of the HUD-approved Development Program.

95. Under § 805.422(e) there were several comments to the effect that a Homebuyer would not be compelled to take title to the home when the family income has reached the point at which the family could afford to buy the home. As a result of these comments, the regulation provides the Homebuyer with an alternative under which it need not purchase the home at that time, but in such case its financial status will be the same as if it had purchased the home.

96. In connection with § 805.423, a comment pointed out that when a Homebuyer acquires title to the home, it is no longer covered by the Cooperation Agreement and may become subject to property taxes. These comments may be correct, but they present a tribal rather than a Federal problem.

97. Further, under § 805.423, a comment expressed approval of the IHA homeownership financing plan and added that it would be a good method for providing housing for those of higher income who, from the beginning, can afford to make the payments called for under this financing plan. This suggestion raises policy and legal questions because it might be viewed as a program to provide housing for other than low-income families.

98. Another comment on this section asked what happens if the family who takes title under the IHA homeownership plan suffers a reduction in income. Section 805.423(b)(1) provides that there should be an adjustment of monthly mortgage payments in the event of a reduction in income. It should also be noted that because of this potential HUD assistance which remains available, a dwelling unit continues to be under the ACC until the mortgage to the IHA is fully paid.

99. Several commenters pointed out that on some reservations the power to evict rests with the tribal court or the tribal council and, in some instances, in state court. Section 805.424 has been modified to include a provision which states that the IHA's procedures for the termination of an MHO Agreement shall incorporate all the steps and provisions needed to achieve compliance with local or tribal law (and state law, if applicable) with no additional, or the least possible additional, delay. In addition, the provision requiring the IHA to "evict" a family under certain conditions is changed to a requirement that the IHA "institute eviction proceedings."

100. One commenter recommended that § 805.425(b) be expanded to allow the Homebuyer to designate a successor without regard to whether the designee is a member of the Homebuyer's family or is an occupant of the home at the time of death or other event. The recommendation was not accepted.

Until the Homebuyer has actually acquired title, the legal status is that of a lessee under a lease-purchase contract. The home as such is not part of his/her legal estate. The lease-purchase contract (MHO Agreement) is between the IHA and the Homebuyer's family. So long as the designated successor is a member of the Homebuyer's family and an occupant of the home, succession to that person is in keeping with the family concept. However, in the event that a successor Homebuyer has not been designated in the MHO Agreement or that the designated successor Homebuyer is no longer eligible or declines to succeed to the home in accordance with the terms of the MHO Agreement, the MHO Agreement must be terminated and a new MHO Agreement executed with a successor Homebuyer selected by the IHA.

101. One commenter suggested that if the Homebuyer meets his/her obligations under the MHO Agreement, the Homebuyer should have final determination on the handling of insurance proceeds. This recommendation was not accepted. The IHA owns the housing until a Homebuyer has achieved homeownership. Nevertheless, the IHA is required to consult with the Homebuyer as to whether the home should be repaired or rebuilt. However, language has been added in § 805.426(b)(2) to specify that the IHA shall use the insurance proceeds for repair or rebuilding unless there is good reason for not doing so. If the IHA determines that there is good reason for not repairing or rebuilding the home and the Homebuyer disagrees, the matter is submitted to HUD for final determination.

102. With respect to § 805.428, which deals with conversions of Mutual-Help Projects that were placed under ACC prior to March 9, 1976, it was suggested that when title to one or more units is acquired by Homebuyers, the full annual contribution for the project should continue to be paid in order to accelerate the achievement of ownership by the remaining Homebuyers. This suggestion will be given consideration. It is not an appropriate subject for this group of amendments.

103. Under § 805.429(e), on counseling, it was pointed out that there may be need for some counseling funds before the execution of the ACC. Accordingly, language has been added to § 805.209(a)

authorizing use of part of the preliminary loan for this purpose.

104. Under § 805.429(g), which authorizes HUD to terminate a counseling program if it is not being properly implemented, the question was asked what would happen if the IHA in question is required to provide counseling in another Project awaiting approval of a development program. This is an operating problem which would have to be resolved in the light of the actual facts of the particular area.

105. Under § 805.429, there were several suggestions concerning procedures in connection with the BIA training program. These suggestions could not be considered for adoption at this time because the use of HUD-approved BIA training program is governed by the Interdepartmental Agreement with the Departments of the Interior and HUD.

106. Recommendations for the conversion of rental housing to homeownership and for the conversion of "old" MH (before March 9, 1976) to "new" MH deal with issues which go beyond the scope of the present amendments. These issues will be considered by the recently-formed Interagency Working Group (Interior, HUD and HEW) and any proposed changes will be made available for comment at a later date.

107. Several commenters expressed the need for simplification of accounting procedures. Accounting procedures are not part of this regulation but are discussed in accounting handbooks. HUD recognizes the importance of and is making continuing efforts to achieve as much simplification of the accounting requirements as possible consistent with maintenance of the individual rights and obligations of the Homebuyers or tenant families as well as those of the IHA and HUD.

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Procedures for protection and Enhancement of Environmental Quality. This Rule has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions, or levels of government. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of Rules Docket Clerk at the above address.

Accordingly, title 24, Chapter VIII, Part 805 is amended as follows:

PART 805—INDIAN HOUSING

Subpart A—General

Subpart B—Development

Subpart C—Operation

Subpart D—Mutual Help Homeownership Opportunity Program

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); secs. 201(b) and 203 of the Housing and Community Development Act of 1974 (42 U.S.C. 1437, note and 1437f, note); U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), especially sections 5(b), 5(c) and 5(h) (42 U.S.C. 1437c(b), 1437c(c), and 1437c(h)).

Subpart A—General

§ 805.101 Applicability and scope.

(a) *General.* (1) Under the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), the U.S. Department of Housing and Urban Development provides financial and technical assistance to public housing agencies for the development and operation of low income housing projects. This part is applicable to such projects which are developed or operated by an Indian Housing Authority in the area within which such Indian Housing Authority is authorized to operate.

(2) If assistance under this part is not available to a low income Indian family because the family desires housing in an

area within which no Indian Housing Authority is authorized to provide housing, or if for any other reason an Indian family desires housing assistance other than under this part, a family may seek housing assistance under other parts of this chapter.

(b) *Other HUD regulations and requirements.* The provisions of this part do not constitute a self-contained or complete statement of the HUD regulations and requirements affecting the development or operation of low income housing Projects of Indian Housing Authorities. Except as modified or supplemented by the provisions of this part, HUD regulations, procedures and requirements generally applicable to the development or operation of low income housing are applicable to Projects subject to this part.

§ 805.102 Definitions.

This section sets forth certain definitions of terms used in this part. Definitions of other terms are contained in various sections where the terms are used. For a list of cross references to the location of the various definitions, see § 805.430.

ACC. An Annual Contributions Contract.

Act. The U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.).

Annual Contributions Contract. A contract on a form prescribed by HUD under which HUD agrees to provide loans and annual contributions to assist the development and operation of a low income housing project under the Act, and the IHA agrees to develop and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations, requirements and procedures pursuant thereto. The amount charged against contract authority is the maximum debt service annual contribution payable under the ACC and this amount multiplied by the maximum number of debt service annual contributions over the term of the ACC is the amount charged against budget authority.

BIA. The Bureau of Indian Affairs in the Department of the Interior.

Construction Contract. The contract for construction in the case of the Conventional method, or the Contract of Sale in the case of the Turnkey method.

Conversion. A conversion of an Existing Project in accordance with § 805.428.

Development Cost. See Total Development Cost.

Development Program. A statement of the basic elements of a Project, including the estimated Total Development Cost of the Project, as adopted by the IHA and approved by HUD.

Existing Project. A Mutual Help Project placed under ACC before March 9, 1976, the effective date of this part.

Home. A dwelling unit covered by a Homebuyer's Mutual Help and Occupancy Agreement.

Homebuyer. A person(s) who has executed a Mutual Help and Occupancy Agreement with the IHA, and who has not yet achieved homeownership.

Homeowner. A former Homebuyer who has achieved ownership of his Home.

HUD. The Department of Housing and Urban Development, including the Regional, Area or Service Office which has been delegated authority under the Act to perform functions pertaining to this Part for the area in which the IHA is located.

IHA. An Indian Housing Authority.

IHA Homeownership Financing. IHA financing for purchase of a Home by an eligible Homebuyer who gives the IHA a Promissory Note and Mortgage for the balance of the purchase price (see § 805.423).

IHS. The Indian Health Service in the Department of Health, Education, and Welfare.

Indian. Any person recognized as being an Indian or Alaska Native by a tribe, the Government, or any state.

Indian Area. The area within which an IHA is authorized to provide housing.

Indian Housing Authority. A public housing agency established (a) by exercise of a tribe's powers of self-government independent of state law, or (b) by operation of state law providing specifically for housing authorities for Indians.

Interdepartmental Agreement. The agreement among HUD, the Department of Health, Education and Welfare and the Department of the Interior concerning assistance to Projects developed and operated under the Act (Appendix I to Subpart B).

MEPA. The Monthly Equity Payments Account (see § 805.421(b)(1)).

MH. Mutual Help.

MH Construction Contract. A Construction Contract for an MH Project where an MH contribution of work, materials or equipment is to be made, which contract shall be on a form prescribed by HUD.

MH Contribution. A contribution of land, work, cash, materials or equipment toward the Development Cost of a Project in accordance with a Homebuyer's MHO Agreement, credit for which is to be used toward purchase of a Home unless used earlier to pay for maintenance or other obligations of the Homebuyer.

MHO Agreement. A Mutual Help and Occupancy Agreement between an IHA and a Homebuyer.

MH Program. The Mutual Help Homeownership Opportunity Program.

MH Project. A Project developed and operated under the MH Program.

Preliminary Loan. A loan by HUD to an IHA prior to the execution of an ACC to pay the cost of preliminary survey and planning and under special circumstances other approvable costs, as provided under § 805.209.

Program Reservation. A written notification by HUD to an IHA, which is not a legal obligation, but which expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, to enter into a new or amended Preliminary Loan Contract or ACC covering the stated number of housing units, or such other number as is consistent with the amount of contract and budget authority reserved by HUD under the Program Reservation.

Project. The entire undertaking to provide housing as identified in the ACC involved, including all real or personal property, funds and reserves, rights, interests and obligations, and activities related thereto to be developed and operated by an IHA.

Total Development Cost. The sum of all HUD-approved costs for a Project incurred by an IHA in any and all undertakings necessary for planning, site acquisition, demolition, construction or equipment and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of the Project.

Tribe. An Indian tribe, band, pueblo, group or community of Indians or Alaska Natives.

§ 805.103 Types of low income housing projects.

IHAs may develop the following types of Projects:

(a) *Rental.* In a Rental Project, the occupants are month-to-month tenants of the IHA. Projects may be developed with single family detached, duplex, row house, walk-up, garden type, or elevator structures. Projects for the elderly and the handicapped may include congregate housing.

(b) *Mutual Help Homeownership Opportunity.* This program (see Subpart D) is available only for use by IHAs eligible for assistance under this part. Under this program, a Homebuyer enters into an MHO Agreement under which the Homebuyer agrees to (1) contribute cash, work, land, materials, or equipment, or a combination thereof, for development of the Project; (2) make

monthly payments based on income; and (3) provide all maintenance of the home. In return, the initial purchase price of the home is reduced each month in accordance with a predetermined purchase price schedule, and the Homebuyer is given the right to buy the home by payment of the remaining balance of the purchase price at the time of the purchase. The credit for the Homebuyer's contribution is available for maintenance of the home; and any balance is applied against the purchase price of the home.

(c) *Section 8 Housing Assistance Payments.* The regulations for this program are set forth in Parts 880, 881, 882 and 883 of this chapter. Under this program, a low income family leases a dwelling unit in newly constructed, substantially rehabilitated or existing housing. Housing assistance payments are made on behalf of the family to cover the difference between the contract rent of the unit and the amount payable by the family, as determined in accordance with schedules and criteria established by HUD. This program may include rental and cooperative projects, including housing for the elderly or handicapped and congregate housing, and homeownership opportunity housing (see Section 8(c)(8) of the Act).

§ 805.104 Assistance from Indian Health Service and Bureau of Indian Affairs.

Projects undertaken by IHAs of Federally Recognized Tribes shall be developed and operated in accordance with the provisions of the Interdepartmental Agreement. "Federally Recognized Tribe" means a tribe recognized as eligible for services from BIA or IHS. Since HUD assistance under this part is not limited to IHAs of Federally Recognized Tribes, provisions in this Part relating to assistance from BIA or IHS, or to required approvals, actions or determinations by these agencies in connection with such assistance, shall be construed as applicable only to Projects undertaken by IHAs of Federally Recognized Tribes. See § 805.208(f) with respect to the encouragement of participation by IHS and BIA in the case of other projects.

§ 805.105 Applicability of civil rights statutes.

(a) *Indian Civil Rights Act.* The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–03) provides, among other things, that "no Indian tribe in exercising powers of self-government shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act applies to tribes which exercise powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to state law, the capacity of the tribe to exercise powers of self-government and the applicability of the Indian Civil Rights Act shall be determined by HUD on a case-by-case basis. Projects of IHAs subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all HUD requirements thereunder.

(b) *Non-applicability of Title VI and Title VIII.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. 3601 et seq.), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to IHAs established by exercise of a tribe's powers of self-government. HUD regulations implementing Title VI and Title VIII shall not be applicable to development or operation of Projects by such IHAs. In the case of an IHA established pursuant to state law, the question of applicability of Title VI and Title VIII shall be determined by HUD on a case-by-case basis.

§ 805.106 Preferences, opportunities, and nondiscrimination in employment and contracting.

(a) *Indian Self-Determination and Education Assistance Act (preference for Indians).* HUD has determined that the Projects under this Part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible: (1) Preference and opportunities for training and employment shall be given to Indians, and (2) preference in the award of contracts and subcontracts shall be given to Indian Organizations and Indian-owned Economic Enterprises. "Indian Organizations and Indian-owned Economic Enterprises" include both: (i) any "economic enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–262); that is "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit: *Provided*, That such Indian ownership shall constitute not less than 51 percent of the enterprise, and (ii) any "tribal organization" as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638); that is, "the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities * * *."

(b) *Executive Order 11246 (equal employment opportunity).* (1) Contracts for construction work in connection with Projects under this Part are subject to Executive Order 11246 (30 FR 12319), as amended by Executive Order 12319, as amended by Executive Order 11375 (32 FR 14303), and applicable implementing regulations (24 CFR, Part 130; 41 CFR, Chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin.

(2) Compliance with Executive Order 11246, and related regulations, orders and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act.

(c) *IHA's Own Employment Practices.* Each IHA shall adopt and promulgate regulations with respect to the IHA's own employment practices which shall be in compliance with its obligations under section 7(b) of the Indian Self-Determination and Education Assistance Act, and Executive Order 11246, where applicable. A copy of these regulations shall be posted in the IHA office, and a copy shall be submitted to HUD promptly after adoption by the IHA. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of Title VII.)

§805.107 Compliance with other Federal requirements.

(a) *National Environmental Policy Act.* Projects shall be developed in compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and all requirements thereunder.

(b) *Clean Air Act and Federal Water Pollution Control Act.* Projects shall be

developed in compliance with the Clean Air Act (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and all requirements thereunder.

(c) *Davis-Bacon Wage Rates for Laborers and Mechanics.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276a–5), shall be paid to all laborers and mechanics employed in the development of a Project.

(d) *Professional and Technical Wage Rates.* Not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD, shall be paid to all architects, technical engineers, draftsmen and technicians employed in the development of a Project.

(e) *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Expenses of Temporary Relocation.* (1) When a Project is developed by an IHA established in accordance with § 805.108(a), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") (42 U.S.C. 4601 et seq.) does not apply, because such an IHA is not a "State agency" covered by the Uniform Act.

(2) When a Project is developed by an IHA established in accordance with § 805.108(B), the Project shall be developed in compliance with the Uniform Act and HUD policies and requirements thereunder (24 CFR Part 42).

(3) In the case of both paragraph (e) (1) and (2) of this section, Development Cost may include the reasonable moving costs for a family which is moved from a Project site during construction and is returned to the site after completion.

§ 805.108 Establishment of IHAs pursuant to Tribal law or State law.

An IHA may be established either:

(a) By a tribal ordinance enacted by exercise of a tribe's powers of self-government independent of state law, creating an IHA with all necessary legal powers to carry out low income housing projects for Indians, which IHA shall be established in accordance with § 805.109; or

(b) Pursuant to a state law which provides for the establishment of IHAs with all necessary legal powers to carry out low income housing projects for Indians.

§ 805.109 Procedures for establishment of IHAs by Tribal ordinance.

(a) *Applicability.* This section shall be applicable only when an IHA is established by exercise of a tribe's powers as described in § 805.108(a).

(b) *Legal Capacity of Tribe to Establish IHA.* Where an Indian tribe has governmental police power to promote the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(c) *Approval or Review of Ordinance by the Department of the Interior.* HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD, accompanied by evidence that the tribe's enactment of the ordinance either has been approved by the Department of the Interior or has been reviewed and not objected to by that Department.

(d) *Form of Ordinance.* The form of tribal ordinance shown as Appendix I to this Subpart A shall be used for the establishment of IHAs by tribal ordinance on and after March 9, 1976, the effective date of this part. No substantive change may be made in the form of tribal ordinance except as indicated by footnotes in Appendix I or with specific written approval from HUD.

(e) *Amendment of Ordinance Previously Enacted.* Tribal ordinances enacted prior to the effective date of this part, which do not conform to the required provisions of the form of ordinance set out as Appendix I, shall be amended to conform thereto as soon as possible. Beginning January 1, 1977, no contract or amendment providing any additional commitment for HUD financial assistance shall be entered into unless such conforming amendments have been enacted.

(f) *Submission to HUD of Documents Establishing IHA.* The tribal ordinance, evidence of Department of the Interior approval or review, and the following documentation relating to the initial organization of the IHA, in the form prescribed by HUD, shall be submitted to HUD prior to or with any application for financial assistance:

(1) Certificate of appointment of Commissioners.

(2) Commissioner's oath of office.

(3) Notice of organization meeting.

(4) Consent to meeting.

(5) Minutes of meeting.

(6) Resolutions establishing the IHA, adopting the by laws, adopting the seal, designating a regular place of meeting, and designating officers.

(7) Bylaws.

(8) Certificate of Secretary as to authenticity of documents.

(9) General Certificate of Housing Authority.

§ 805.110 IHA Commissioners who are tenants or homebuyers.

(a) *Tenant or Homebuyer Commissioners.* No person shall be barred from serving on an IHA's Board of Commissioners because he is a tenant or Homebuyer in a housing Project of the IHA. A Commissioner who is a tenant or Homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or Homebuyers, even though such matters affect him as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or Homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a tenant or Homebuyer.

(b) *Commissioner as IHA Employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA except under unusual circumstances and with HUD approval.

Appendix I—Tribal Ordinance

Pursuant to the authority vested in the ———— Tribe by its Constitution, and particularly by Article ————, Sections ———— thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the Tribal Council of the ———— Tribe hereby establishes a public body known as the ———— Housing Authority (hereinafter referred to as the Authority), and enacts this ordinance which shall establish the purposes, powers and duties of the Authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this ordinance. A copy of the ordinance duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding.

Article I—Declaration of Need

It is hereby declared:

1. That there exist on the ———— Reservation insanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy insanitary, unsafe and overcrowded dwelling accommodations.

2. That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals

and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

3. That the shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprises;

4. That the providing of decent, safe and sanitary dwelling accommodations for persons of low income are public uses and purposes, for which money may be spent and private property acquired and are governmental functions of Tribal concern;

5. That residential construction activity and a supply of acceptable housing are important factors to general economic activity, and that the undertakings authorized by this ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

6. That the necessity in the public interest for the provisions hereinafter enacted is, hereby declared as a matter of legislative determination.

Article II—Purposes.

The Authority shall be organized and operated for the purposes of:

1. Remedying unsafe and insanitary housing conditions that are injurious to the public health, safety and morals;

2. Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and

3. Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings.

Article III—Definitions.

The following terms, wherever used or referred to in this ordinance, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Area of Operation" means all areas within the jurisdiction of the tribe.

"Council" means the ———— Tribal Council.

"Federal government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

"Homebuyer" means a person(s) who has executed a lease-purchase agreement with the Authority, and who has not yet achieved homeownership.

"Housing project" or *"project"* means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: Rental, sale of individual units in single or multifamily structures under conventional condominium, or cooperative sales contracts or lease-purchase agreements; loans; or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accomodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances; for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

"Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this ordinance.

"Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal government when it is a party to any contract with the Authority in respect to a housing project.

"Persons of low income" means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

Article IV—Board of Commissioners.

1. (a)[2] (1) The affairs of the Authority shall be managed by a Board of Commissioners composed of five persons.

(2) The Board members shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(3) A commissioner may be a member or non-member of the Tribe, and may be a member or non-member of the Tribal Council.

(4) No person shall be barred from serving on the Board because he is a tenant or Homebuyer in a housing project of the Authority; and such commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or Homebuyers, even though such matters affect him as well. However, no such commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or Homebuyer), or to be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a tenant or Homebuyer.

(b)[3] The term of office shall be four years and staggered. When the Board is first established, one member's term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, and the last two in four years. Thereafter, all appointments shall be for four years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

(c)[4] The Council shall name one of the Commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer, and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman, the Secretary shall preside.

(d)[5] A member of the Board may be removed by the appointing power for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the appointing power and duty after the member has been given a written notice of the specific charges against him at least 10 days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses in his behalf. In the event of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power and a copy thereof sent to the appropriate office of the Department of Housing and Urban Development.

(e)[6] The Commissioners shall not receive compensation for their services but shall be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties.

(f)[7] A majority of the full Board (i.e., notwithstanding the existence of any vacancies) shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

(g) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(h) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Council as required by Article VII, Section 1, of this ordinance.

2. Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

Article V—Powers

1. The Authority shall have perpetual succession in its corporate name.

2. The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority.

3. The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

(a) To adopt and use a corporate seal.

(b) To enter into agreements, contracts and understandings with any governmental agency, Federal, state or local (including the Council) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal financial assistance.

(c) To agree, notwithstanding anything to the contrary contained in this ordinance or in any other provision of law, to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the Authority may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to maximum hours of labor, and comply with any conditions which the Federal government may have attached to its financial aid to the project.

(d) To obligate itself, in any contract with the Federal government for annual contributions to the Authority, to convey to the Federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject; and such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: *Provided*, That the contract requires that, as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to the Authority the project as then constituted.

(e) To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(f) To borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI of this ordinance.

(g) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(h) To purchase land or interest in land or take the same by gift; to lease land or interests in land to the extent provided by law.

(i) To undertake and carry out studies and analyses of housing needs, to prepare housing needs, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(j) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project (including individual cooperative or condominium units): To lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or Homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to make sure further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this ordinance.

(k) To finance purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development.

(l) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or Homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or Homebuyer.

(m) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income.

(n) To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

(o) To invest such funds as are not required for immediate disbursement.

(p) To establish and maintain such bank accounts as may be necessary or convenient.

(q) To employ an executive director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

(r) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(s) To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a State or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purposes of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies.

(t) To adopt such bylaws as the Board deems necessary and appropriate.

4. It is the purpose and intent of this ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

5. No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the Authority in its operations pursuant to this ordinance.

Article VI—Obligations

1. The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable: (a) Exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the Federal government in aid of such project; (b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or (c) from its revenues generally. Any of such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

2. Neither the commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

3. The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

4. Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this ordinance shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this ordinance and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

5. Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold at public or private sale at not less than par.

(d) In case any of the commissioners of the Authority whose signatures appear on any obligations cease to be commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

6. Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this ordinance.

7. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this ordinance, may:

(a) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations.

(c) Covenant against pledging all or any part of its rents, fees and revenues or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(e) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) Provide for the replacement of lost, destroyed or multilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders or which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(q) Exercise all or any part or combination of the powers granted in this section.

(r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(s) Make any covenants and do any acts and things necessary or covenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

Article VII—Miscellaneous

1. The Authority shall submit an annual report, signed by the Chairman of the Board, to the Council showing (a) a summary of the year's activities, (b) the financial condition of the Authority, (c) the condition of the properties, (d) the number of units and vacancies, (e) any significant problems and accomplishments, (f) plans for the future, and (g) such other information as the Authority or the Council shall deem pertinent.

2. During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority; and such disclosure shall be entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article VI, Section 1(a)(4).

3. Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.

4. The Authority shall obtain or provide for the obtaining of adequate fidelity bond handling cash, or authorized to sign checks or certify vouchers.

5. The Authority shall not construct or operate any project for profit.

6. The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

7. All property including funds acquired or held by the Authority pursuant to this ordinance shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgement against the Authority to be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the Federal government to pursue any remedies conferred upon it pursuant to the provisions of this ordinance or the right of the Authority to bring eviction actions in accordance with Article V, Section 3(1).

Article VIII—Cooperation in Connection With Projects

1. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Tribe hereby agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project of the Authority.

(b) It will furnish or cause to be furnished to the Authority and the occupants of projects all services and facilities of the same character and to the the same extent as the Tribe furnishes from time to time without cost or charge to other dwellings and inhabitants.

(c) Insofar as it may lawfully do so, it will grant such deviations from any presentor future building or housing codes of the Tribe as are reasonable and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are

reasonable and necessary for the development of such project, and the surrounding territory.

(d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(e) The Tribal Government hereby declares that the powers of the Tribal Government shall be vigorously utilized to enforce eviction of a tenant or Homebuyer for nonpayment or other contract violations including action through the appropriate courts.

(f) The Tribal Courts shall have jurisdiction to hear and determine an action for eviction of a tenant or Homebuyer. The Tribal Government hereby declares that the powers of the Tribal Courts shall be vigorously utilized to enforce eviction of a tenant or Homebuyer for nonpayment or other contract violations.

2. The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed or modified without the consent of the Department of Housing and Urban Development, so long as (a) the project is owned by a public body or governmental agency and is used for low income housing purposes, (b) any contract between the Authority and the Department of Housing and Urban Development for loans or annual contributions, or both, in connection with such project, remains in force and effect, or (c) any obligations issued in connection with such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing including the Federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

Article IX—Approval by Secretary of the Interior

With respect to any financial assistance contract between the Authority and the Federal government, the Authority shall obtain the approval of the Secretary of the Interior or his designee.

Footnotes

[1] Article I may be modified as deemed appropriate.

[2] Article IV, section 1(a), paragraphs (1), (2) and (3) may be modified. For example the number of board members may be more or less than five; the appointments may be made by the elected head of the tribal government, rather than the Council. The IHA may be made a department or division of the tribal government, membership on the Board may be limited to those who are members of the tribe, or to those who are nonmembers of the Council, or to a certain number of any category.

[3] Article IV, section 1(b) may be modified to conform to changes in Article IV, section 1(a), and as to the length of the term of membership.

[4] Article IV, Section 1(c) may be modified as to the manner of appointment of the Chairman. For example, it may provide for appointment by the Board members or by the elected head of the tribal government. This paragraph may also be modified as to the manner of appointment of the other officials.

[5] Article IV, Section 1(d) may be modified, but adequate safeguards against arbitrary removal shall be included.

[6] Article IV, Section 1(f) may be modified if deemed appropriate where the full Board consists of more than 5 members.

[7] Article VIII, Section 1(f) may be modified to insert the name of the appropriate court, or it may be deleted where it is demonstrated to HUD that the jurisdiction for evictions is vested in other than tribal courts (e.g., State courts or Courts of Indian Offenses).

Subpart B—Development

§ 805.201 Definitions.

See §§ 805.102 and 805.430.

§ 805.202 Roles and responsibilities of Federal agencies.

HUD, IHS and BIA shall coordinate functions and funding in accordance with the Interdepartmental Agreement and §805.208. HUD assistance shall not include items or services which either BIA or IHS has agreed to provide or fund under the Interdepartmental Agreement, or items or services otherwise provided by other Government agencies, except as provided in § 805.214(e).

§ 805.203 Production methods and requirements.

(a) *Justification for production method.* The IHA's application for a Project shall state which of the production methods described in this section it prefers to use supported by a justification for the use of the proposed method, such as economy, quality, design, expeditious completion and maximum competition. The method to be used shall be approved by HUD in the agreement entered into as a result of the Project Coordination Meeting (see § 805.208).

(b) *Turnkey Method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a Project described in the IHA's invitation for proposals. The Invitation for Proposals may, when approved by HUD, prescribe the sites to be used. The IHA selects, subject to HUD approval, the best of the proposals received, taking into consideration price, design, the developer's experience and other evidence of the developer's ability to complete the Project. After HUD approval of the proposal selected by the IHA, the working drawings and specifications are agreed to by the developer, the IHA, and HUD, and the developer and the IHA enter into a Contract of Sale. Upon completion of the Project in accordance with the Contract of Sale, the IHA purchases the Project from the developer. The IHA may employ an architect to assist in evaluating proposals and negotiating the working drawings and specifications. The IHA provides inspection services by an architect, engineer or other qualified person. The IHA may require the developer to furnish assurance in the form of 100 percent performance and payment bonds or other security as may be acceptable. The decision by the IHA as to whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

(c) *Conventional Method.* Under the Conventional Method, the IHA, after HUD approval of the plans and specifications, shall advertise for contractors to build and project; and the award shall be made to the lowest, responsible bidder. The contractor shall be required to provide assurance in the form of 100 percent performance and payment bonds, or a lesser percentage or other security approved by HUD. The contractor received progress payments during construction, and a final HUD approved payment upon completion in accordance with the contract.

(d) *Modified Turnkey (or Modified Conventional) Method.* Under this modified method the procedure is the same as under the Conventional Method except that: (1) The developer will receive no progress payments from the IHA and will be responsible for acceptable completion before receiving any payment from the IHA; and (2) the IHA may but need not require the developer to furnish assurance in the form of 100 percent performance and payment bonds or other security as may be acceptable. The decision by the IHA as to whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

(e) *Acquisition of Existing Housing (with or without rehabilitation).* Under the Acquisition Method, the IHA acquires existing housing which may need only minor repairs or may require substantial rehabilitation. Repair or rehabilitation may be accomplished prior to acquisition using Turnkey procedures or after acquisition, as authorized by HUD.

(f) *Force Account Method.* (1) Under the Force Account Method an IHA performs construction or rehabilitation in a manner similar to a contractor, using a work force entirely employed by and under the supervisions of the IHA, or in combination with contracts for those portions of the work which can be better or more economically performed by an independent contractor. Force

Account work shall be subject to Davis-Bacon wage rates.

(2) The Force Account method may be used for development of a new construction Project only (i) in exceptional cases, (ii) with the approval of the HUD Assistant Secretary for Housing, and (iii) if the tribe agrees in writing to cover any costs in excess of the HUD-approved Development Cost, including contingencies, and demonstrates that it has the financial resources to meet the excess costs up to a specified amount.

(3) The HUD Field Office may approve use of the Force Account method, (i) for repair and rehabilitation of existing housing acquired by the IHA, (ii) for correction of deficiencies in design, construction or equipment (where allowed under § 895.223(b)(1), and (iii) for completion of units where the original contractor does not complete.

(4) In any case, whether under paragraph (2) or (3), the IHA may justify use of the Force Account method and demonstrate the capabilities of the IHA to achieve timely completion of the work within the Total Development Cost, and with additional assurances provided by the tribe.

(g) *Public advertisement.* Contracts for development of a Project may be awarded to Indian Organizations and Indian-owned Economic Enterprises or to other construction contractors or developers only after public advertisement for competitive bids or proposals. The advertisement shall inform all prospective contractors or developers of the amount of the applicable prototype cost limit and of the maximum total contract price which has been determined to be reasonable (see § 805.212(b)).

805.204 Indian preference in contracting.

(a) *Preference in the Award of Contracts.* (1) An IHA shall to the greatest extent feasible under this Part give preference in the award of contracts in connection with a Project to Indian Organizations and Indian-owned Economic Enterprises. The following method of providing preference may be used with HUD approval:

(i) Advertise for bids or proposals limited to qualified Indian Organizations and Indian-owned Enterprises, or

(ii) Use a two-stage procedure: *Stage 1.* Publish a prior invitation for Indian-owned Economic Enterprises to submit a Statement of Intent to respond to such a limited advertisement when published, and to furnish with the Statement of Intent, or within a specified period of time, evidence sufficient to establish their qualifications as an Indian Organization or an Indian-owned Economic Enterprise in accordance with paragraph (a)(3) of this section. *Stage 2.* If responses are received from one or more Indian enterprises who are found to be qualified, advertise for bids or proposals limited to qualified Indian Organizations and Indian-owned Economic Enterprises.

(2) If an IHA has proceeded in accordance with paragraph (a)(1)(i) or (a)(1)(ii) of this section and has failed to receive any Statement of Intent or approvable bid or proposal from one or more qualified Indian enterprises, the IHA may advertise for bids or proposals without limiting the advertisement to Indian Organizations and Indian-owned Economic Enterprises and as in all cases shall accept the lowest responsible bid or the best proposal.

(3) A prospective contractor seeking to qualify as an Indian Organization or Indian-owned Enterprise shall submit with or prior to submission of his bid or proposal:

(i) Evidence showing fully the extent of Indian ownership and interest.

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; material or equipment supply arrangements; and management, salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest.

(iii) Evidence sufficient to demonstrate to the satisfaction of the IHA and HUD that the prospective contractor has the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the proposed contract (see § 805.211(c)).

(b) *Required Contract Clause.* The IHA shall incorporate the following clause (referred to as a section 7(b) clause) in each contract awarded in connection with a Project:

(1) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preferences and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(2) The parties to this contract shall comply with the provisions of said section 7(b) and all HUD requirements pursuant thereto.

(3) The contractor shall, in connection with this contract, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor is in violation of the section 7(b) clause.

(c) *Additional Indian Preference Requirements.* An IHA may, with HUD approval, provide for Indian preference requirements in addition to those under § 805.204(a) and the section 7(b) clause required under § 805.204(b), as conditions for the award of, or in the terms of, any contract in connection with a Project if the additional Indian preference requirements are consistent with the objectives of the section 7(b) clause. Such Indian preference requirements or in addition to § 805.204 (a) and (b) may not result in a higher cost or greater risk of non-performance or longer period of performance.

(d) *Inclusion of All Preference Requirements in Information for Prospective Contractors.* With respect to any contract, the information for prospective contractors shall set forth all Indian preference requirements affecting award of, or to be included in the terms of the contract.

§ 805.205 Allocations of contract authority.

HUD will allocate contract authority for Indian housing in conformance with section 213(d) of the Housing and Community Development Act of 1974.

§ 805.206 Submission and HUD review of Application for Program Reservation.

(a) *Submission to HUD.* To apply for a Project, an IHA shall submit an application on the form prescribed by HUD. The application shall be accompanied by a resolution of the local governing body approving the application for a preliminary loan, if a preliminary loan is requested. Where the provisions for the necessary local government cooperation (as in Subpart A—Appendix I, Article VIII) are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit with the application if possible but in any event prior to ACC, an executed cooperation agreement, or a showing that a cooperation agreement already exists for the location involved

sufficient to cover the number of units in the application.

(b) *Action on Application.* (1) HUD shall begin processing of an application as soon as possible after receipt. Within 10 working days of its receipt of the application, HUD shall (i) notify the applicant of the approximate date, which shall be as soon as possible, by which HUD will act on the application or, (ii) if the application is incomplete, HUD will notify the applicant of the documents missing or incomplete.

(2) The application shall designate at least the general locations of the proposed housing. To expedite processing, the application may be accompanied by comments on the application by the Chief Executive Officer on behalf of the local government. (For areas with a Housing Assistance Plan, see 24 CFR Part 891 Subpart B. For other areas, see 24 CFR Part 891 Subpart C.)

(3) OMB Circular A–95 includes the following provisions:

* * * Applications from federally recognized Indian tribes are not subject to the requirements of OMB Circular A–95. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. Federal Agencies (HUD) will notify the appropriate State and areawide clearinghouse of any applications from federally recognized Indian tribes upon their receipt. Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, Federal agencies will, upon request of such Tribal Government transmitted through the Office of Management and Budget, require the applications for assistance under programs covered by this Part from such Tribal departments, divisions, enterprises, and entities be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse * * *. (See § 805.104 for the definition of "Federally Recognized Tribe.") See also OMB Handbook A–95, *What It Is—How It Works.*

(4) If the application is approved, a Program Reservation on the form prescribed by HUD shall be issued to the IHA. The Program Reservation shall specify whether the Project is Rental or Mutual Help, the total number of dwelling units, and the number of units for the elderly or handicapped, if any. The Program Reservation shall set a time limit of not to exceed one year within which the IHA must submit an approvable Development Program. (See § 805.208(d)).

(5) If the application is disapproved, HUD shall give the IHA a written notification of disapproval and of the reasons therefor. If the application is approved for fewer units than requested, HUD shall issue a Program Reservation with respect to the total number of dwelling units approved, and the written notification to the IHA shall include a statement of the reasons for not approving the number of units requested. The notification under this paragraph (b)(5) shall state the time within which objections to the HUD action may be presented to the field office director.

§ 805.207 Prerequisites for application approval.

(a) *Determination of Administrative Capability.* An application shall not be approved unless HUD determines that the IHA has, or will achieve within a reasonable time prescribed by HUD, the capability to provide adequate administration in compliance with all applicable HUD requirements of the proposed Project and other IHA Projects without an unreasonable need for continuing HUD assistance. Approval of an application shall not be withheld because of minor administrative deficiencies. As a minimum, however, the IHA shall have the capability to comply with all HUD requirements for prompt completion of development, the maintenance of complete and accurate books of accounts and records, the proper handling of funds, the timely preparation and submission of reports, the maintenance of the property, the occupancy of the housing units, determination of rents and required Homebuyer payments, and the prompt processing of evictions in cases of nonpayment or other serious breach of a lease or Homebuyer agreement.

(b) *Action When IHA Lacks Administrative Capability.* (1) If HUD cannot approve an application because the IHA does not have the capability to provide adequate administration of the proposed Project and other IHA Projects, and if the IHA wishes to achieve and maintain such capability, HUD shall assist the IHA to the extent of funds and staff available to HUD for this purpose. In such case, an application will be approvable after:

(i) Adequate administrative capability has been achieved; or

(ii) The IHA has adopted a plan, satisfactory to HUD, to achieve adequate administrative capability within a specified reasonable time, and after the IHA has demonstrated good faith and diligence in carrying out the plan. If achievement of final goals under such a plan will require an extended period of time, the plan shall include interim goals. The achievement of interim goals may be considered by HUD to be a sufficient demonstration of the IHA's good faith and diligence in carrying out the plan.

(2) If HUD determines that the number of required units is too small for development of adequate administrative capability, the IHA shall be so advised, with a recommendation to combine with other IHAs or to obtain necessary assistance from the tribe, the BIA or other sources.

(c) *Preliminary Feasibility Determination.* An application for a Program Reservation may be approved only if HUD determines that it is likely that the feasibility requirements for approval of the Development Program under § 805.220 or § 805.404(j) can be met.

§ 805.208 Interagency and tribal coordination.

(a) Inasmuch as several agencies (IHA, HUD, BIA and IHS) and the tribal government each have an essential role to play and contribution to make to development of a Project, the process of cooperation and coordination shall begin insofar as is practicable with the preliminary planning and preparation of the application. In any event, this process shall begin as soon as prospective sites have been identified and shall thereafter continue throughout the development process.

(b) In the case of IHA's established by tribal ordinance, each Preliminary Site Report which is submitted to HUD for tentative site approval shall be accompanied by written concurrence of the tribal government, in addition to the approvals of BIA and IHS in accordance with § 805.217(a). The concurrence of each party shall constitute a commitment by the party that it will provide the funds, actions agreed upon, and that this commitment will not be released unless the Program Reservation is cancelled. The final decision as to site approval shall be made by HUD.

(c) The IHA shall submit, with or prior to approval of the Development Program, an agreement between the IHA and the tribal government which shall describe, as specifically as possible, the funds, actions and/or services which on the basis of information furnished by the BIA and IHS are expected to be provided by those agencies. The agreement shall also describe the funds, actions and/or services which are to be provided by the tribal government (including block grant or other funds, as applicable), and shall also express the tribal government's commitment to use its best efforts to assure that the funds, actions and/or services so identified will be provided as needed for purposes of prompt development of the project. The tribal government shall have the

basic responsibility for agreeing with IHS and BIA for the necessary participation and/or contribution by the BIA and IHS.

(d) Promptly after issuance of the Program Reservation, a Project Coordination Meeting shall be held in accordance with the procedures stated in paragraph 3 of the Interdepartmental Agreement. The tribal government shall be represented at this meeting. Periodically, the tribal government, the IHA, HUD and the other concerned federal agencies shall consult and evaluate the progress of the Project development, identify any problems which may threaten compliance with the one-year time limit for submission of an approvable Development Program (see § 805.206) and agree upon appropriate corrective action. If it appears at the last such evaluation prior to the end of the one-year period that the time limit will not be met, the parties shall determine whether an approvable Development Program can be submitted in a reasonable time and whether an extension of the time limit should be recommened to HUD. After considering the results of the evaluation, HUD shall determine whether to extend the time limit, or to cancel the Program Reservation and commitment of contract and budget authority thereunder.

(e) After approval of the Development Program, similar periodic meetings shall be continued for purposes of assuring timely completion of construction to the point of occupancy.

(f) In the case of projects for which no financial assistance is required to be provided by IHS or BIA, their participation in carrying out the provisions of this section shall be encouraged.

§ 805.209 Preliminary loans.

(a) If an application is approved and a Program Reservation is issued, HUD may approve a Preliminary Loan to pay the cost of preliminary surveys and planning (including the cost of appraisals) in respect to the number of units covered by the Preliminary Loan Contract. The Preliminary Loan may also include a portion of counseling funds for use in accordance with a HUD-approved counseling program. (See §§ 805.429(d) and 805.214(i).) Except as provided in paragraph (b) of this section, the amount of Preliminary Loan may not be more than 3 percent of a Total Development Cost which can be supported by the amount of ACC Authority obligated under the Program Reservation.

(b) HUD may approve Preliminary Loan funds in addition to the 3 percent or for purposes other than those provided for in paragraph (a) of this section, if it has been shown to the satisfaction of HUD that (1) because of unusual circumstances it is essential that Development Costs in such amount or for such purpose be incurred prior to execution of the ACC, (2) the Project will successfully proceed to ACC, and (3) the governing body of the locality has agreed to provide the local cooperation required by the Act.

(c) Preliminary Loan funds shall in no event be provided or used for purposes, or in amounts, that would not be approvable for inclusion in a Development Cost Budget.

(d) The IHA shall submit for HUD approval together with the application for a Preliminary Loan, a proposed Preliminary Loan Budget. Preliminary Loan Funds shall not be approved or expended except in accordance with a HUD-approved Preliminary Loan Budget.

(e) Use of development or operating funds of other Projects under ACC to cover costs for a Project which has not reached ACC is strictly prohibited.

§ 805.210 Development program.

The ACC for a Project shall not be executed until the IHA has adopted, and HUD has approved, the Development Program for the Project.

§ 805.211 Contracts in connection with development.

(a) The IHA shall not enter into the Construction Contract for a Project prior to execution of the ACC for the Project.

(b) The IHA shall not, without HUD approval, enter into any contract in connection with the development of a Project, including contracts for work, materials or equipment, or for architectural, engineering, consultant, legal, or other professional services. This requirement shall not apply to MHO Agreements in the form prescribed by HUD or such other types of contracts as HUD may specify.

(c) The IHA shall not award a Construction Contract for the Project until the prospective contractor has demonstrated the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the contract.

§ 805.212 Design.

(a) The design of the housing shall take into account: (1) The extra durability required for safety and security and economical maintenance of such housing, (2) the provision of amenities designed to guarantee a safe and healthy family life and community environment, (3) the application of good design as an essential component of such housing for safety and security as well as other purposes, (4) the maintenance of quality in architecture to reflect the standards of the community, (5) climatic conditions, and (6) the need for maximizing the conservation of energy for heating, lighting, and other purposes and utilizing indigenous energy sources. The Minimum Property Standards (24 CFR Part 200, Subpart S) shall also be taken into account, but shall not be controlling.

(b) The IHA shall prepare and submit to HUD as part of the Development Program a basic outline for a minimum acceptable house for its jurisdictional area in accordance with the applicable design standards, and attendant water supply and waste disposal facilities. This shall be done after appropriate consultation with families to be housed. This recommended outline should provide for variations of the interior to suit particular cultural or family needs and for exterior variations such as in type of material, roof design and overhangs.

(c) The basic outline under paragraph (b) of this section shall be in sufficient detail to enable HUD to determine whether the project can be constructed within the applicable prototype cost limit, and a maximum total construction contract price which has been determined to be reasonable. HUD shall approve the basic outline, with such modifications as may be deemed necessary, if it determines that it can be constructed within applicable cost and price limitations. These limits shall be stated in HUD's approval.

(d) Following HUD approval of the Development Program, the IHA shall prepare the drawings and specifications needed for advertisement for proposals or bids (see § 805.203) and shall submit these, together with the remainder of the documents needed for purposes of the advertisement, to HUD for its approval. The applicable prototype cost limit and the maximum total construction contract price shall be included in the advertisement for proposals or bids pursuant to § 805.203(g).

§ 805.213 Prototype costs in Indian areas.

(a) *Establishment of Separate Prototype Cost Areas.* Where trade conditions and economic influences cause construction costs in an Indian area or portion thereof to be significantly different from such costs in adjoining areas, HUD shall establish or amend the published portion thereof, as a separate Indian prototype cost area.

(b) *Factors to be Considered in Establishing Prototype Cost for Separate Prototype Cost Areas.* (1)

When HUD establishes or amends the published prototype costs for a separate Indian prototype costs area (see Appendix A to 24 CFR, Part 841), consideration shall be given to all relevant factors including pertinent trade conditions and economic influences. The factors to be considered include, where applicable, the following: local customs; abnormal climatic conditions; the logistical problems associated with projects of remote location, low density and or scattered sites; availability of skilled labor or acceptable materials; provisions for the use of wood or coal as an alternative heat source; and, with respect to trust or restricted land, the unavailability of the legal protection normally available for enforcement of claims by contractors, laborers and materialmen. In addition, prototype costs shall provide for features, appropriate for the area, designed to conserve energy, lower utility costs, or utilize indigenous energy sources.

(2) The determination of prototype cost is based on a prototype design. A copy of the prototype design on which a published prototype cost is based shall be supplied to the IHA promptly after publication. The prototype design is furnished to the IHA for assistance in the preparation of the basic housing design under § 805.213(b). Elements of the prototype design may be, but are not required to be, incorporated in the basic house design. If the IHA believes that the prototype design is deficient, it may, within 30 days of receipt of the prototype design, submit to the Field Office a request for modification with supporting justification.

(c) *Revision of Prototype Cost.* IHAs shall design projects that can be built within the prototype cost limit and the maximum total construction contract price as determined by HUD under § 805.212(b). If an IHA finds that a proposed house design cannot be built within 110 percent of the existing prototype cost because construction costs have increased since the date of the data on which the existing prototype cost was based (but not because the design has more expensive features than the prototype design), the IHA shall so state in its submission to HUD of the basic outline pursuant to § 805.212(b) and request a revision of the prototype cost. The request shall be accompanied by evidence of the cost increase. HUD shall agree to revise the prototype cost only if (1) it determines that the evidence of cost increases supports the request and (2) the design cannot be modified to reduce the cost sufficient to permit construction without a revision of the prototype cost.

§ 805.214 Development cost.

(a) *Total Development Cost.* The IHA shall complete development of each Project at the lowest possible cost, and in no event at a cost in excess of the Total Development Cost approved by HUD.

(b) *Cost Limits*—(1) *Prototype Costs Limit—New Construction Projects.* Dwelling, construction and equipment cost (including allocated contingency allowance) for a new construction Project shall not exceed the sum of the unit prototype costs (as published by HUD for the area) for the homes of various sizes and types comprising the Project: *Provided,* That this limit may be increased to an amount not exceeding 110 percent of such sum, if approved by HUD on the basis of special justification.

(2) *Acquisition Projects.* For a Project developed under the Acquisition Method (see § 805.203(e)), Total Development Cost shall not exceed 90 percent (or an appropriately lower percentage if the Project has a projected useful life of less than 40 years in the case of a Rental Project, or of less than 25 years in the case of an MH Project) of the inputed Development Cost of a comparable hypothetical newly constructed low income Indian housing project.

(c) *Streets and Driveways.* The Development Cost of a Project may include the planning, construction and inspection costs of providing on-site streets, sidewalks, curbing and streetlights for such Project. Where BIA is to assume responsibility for maintenance of streets after the housing development is completed, BIA shall be given the opportunity to review the design and to inspect the construction of the street. The cost of driveways within the boundaries of a multi-unit site, or within the boundaries of the individual homesites, in the case of a scattered site Project, may also be included in Development Cost. The total cost of driveways may not, unless specifically agreed to by HUD, exceed one and one-half percent of the HUD-approved Dwelling Construction and Equipment Cost for the Project or an average of $500 per dwelling unit, whichever is higher. Development Cost shall not include the cost of providing the access roads referred to in § 805.216(b). The cost of obtaining access to the site during construction, or costs due to delays in construction because of inaccessibility of the site, shall not be included in Development Cost.

(d) *Water and Sanitation, Electricity and Fuel Distribution Systems.* Development Cost may include: (1) The cost of providing water, sewer, electrical and fuel facilities within the boundaries of any multi-unit site, or within the boundaries of the individual homesites in the case of a scattered site Project; hookups to the appropriate distribution systems, if such systems are available to the multi-unit site, or to the homesites of a scattered site Project; or the pro rata cost of a community water and sewer system where required in accordance with section 8h(2) of the Interdepartmental Agreement. Where reasonably short extensions are needed to make the utility distribution system available to the site, such costs may be included in the Development Cost if the cost can be justified on the basis of net savings in the Development Cost or long-term savings based upon utility analysis.

(2) The costs of providing on-site wells, waste disposal systems, electrical generating and fuel storage facilities and distribution systems.

(e) *Exclusion of Costs for Facilities, Improvements or Services to be Provided by IHS or BIA.* Development Cost shall not include costs of the facilities or improvements described in paragraphs (c) or (d) of this section which are to be provided by the local government or utility company or with respect to an IHA of a Federally Recognized Tribe by IHS or BIA, or of services to be provided by IHS or BIA pursuant to the Interdepartmental Agreement, unless such costs are offset by other parties assuming costs that would otherwise be included in the Development Cost.

(f) *Nondwelling Facilities.* Management, maintenance, and community space and facilities may be approved for inclusion in the Development Cost for a Rental or an MH Project. In addition, where necessary and feasible to achieve adequate fire protection, HUD may approve inclusion of the cost of providing adequate fire warning devices and extinguishing equipment, and also may approve inclusion of all or a part of the reasonable expense of obtaining the required fire-fighting equipment and space for its storage. In areas subject to severe storms, consideration may also be given to the inclusion of the cost of storm shelter space in a Project.

(g) *Contingency Allowance.* HUD may permit a contingency allowance of up to five percent for a Project developed under the Conventional, Modified Turnkey or Force Account method, and up to one percent for a Project developed under the Turnkey method.

However, if HUD determines in writing that a higher contingency allowance is necessary because of special circumstances set forth in the determination, a higher contingency allowance may be permitted, not to exceed ten percent for a Project developed under the Conventional, Modified Turnkey or Force Account method, and three percent for a Project developed under the Turnkey method.

(h) *Initial Insurance Premiums.* The insurance premiums for the first three years may be included in Development Cost, with no obligation for reimbursement from operating receipts.

(i) *Training of tenants.* The Development Cost Budget submitted with the Development Program for a Rental Project shall include an estimated amount for costs of a HUD-approved tenant counseling program not to exceed $500 per dwelling unit (including follow-up needs during the management stage and counseling in connection with turnover.) This counseling program shall be subject to the provisions of § 805.429 (substituting tenant and prospective tenant for Homebuyer) except for those provisions which by their nature are only applicable to MH projects and except for references to the BIA Homebuyer Training Program.

§ 805.215 Design for economy in fuel and energy consumption.

(a) *Choice Among Feasible Options.* In selecting from among feasible options and in designing installations for heating, cooking and electrical services, particular attention shall be given to maximum economy in the cost of fuel or energy, adequacy for the purposes intended, maximum economy in maintenance and the long-term reliability of supplies. All options which are feasible in the locality shall be examined, and HUD shall provide technical assistance for this purpose.

(b) *Cost of Alternate Energy Systems.* Development Cost may include, where local preference and the availability and cost of energy sources indicate, the design, construction and equipment costs of an alternate system, either primary or supplemental, such as coal or wood-burning facilities or solar or wind energy systems. Where locally available coal or wood offers a ready supply of fuel at costs less than those of other fuels which might be used, strong consideration should be given to requests for the installation of stoves or fireplaces as a supplemental or primary system for heating and/or cooking. A further possibility is the supplemental installation of stove flues only, which would permit residents to install coal or wood-burning stoves at their individual option and expense.

§ 805.216 Site selection.

(a) *Relation to Local and Regional Plans.* Site selection shall be made with due regard for local and regional plans.

(b) *Access Roads.* An access road up to the boundaries of a multi-unit site shall be provided by the BIA, the tribe, or other appropriate agency without cost to the Project. In the case of a scattered site Project, access roads up to the boundaries of the individual homesites shall be provided by the Homebuyer, the tribe, or other appropriate agency without cost to the Project. In all cases, access roads shall provide safe and suitable vehicular access at all times. No site may be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity prior to site approval that they will be provided in time for construction purposes, and that the requisite roads will be constructed in time for occupancy of the proposed Project, and will be maintained for continuous accessibility to the Project.

(c) *Water and Sanitation.* The IHA shall, prior to site approval, obtain a written assurance from the IHS, or from the appropriate local agency, that water and sanitation facilities acceptable to the IHS, or to HUD where the IHS has no jurisdiction, exist or will be provided in time for occupancy of the housing. (See also section 8 of the Interdepartmental Agreement.)

(d) *Lighting, Heating and Cooking Sources.* The IHA shall, prior to site approval, obtain a written assurance from the appropriate utility companies, or other entities providing the requisite lighting, heating and cooking sources, that the sources exist or will be provided in time for occupancy of the housing. The statement of assurance shall include the rates currently in effect, and, where possible, information concerning anticipated increases for the next year.

(e) *Physical Characteristics of Site.* The physical characteristics of a site shall be such that the costs of surveys and planning, including but not limited to test borings and test well drilling, are expected to be reasonable, and the physical characteristics shall facilitate overall economy in site preparation, construction and management.

(f) *Topography.* (1) Sites with dominant grades in excess of ten percent shall be avoided where possible.

(2) Low-lying and flat sites shall not be approved unless practical and economical means of surface drainage can be provided to accommodate the level of rainfall expected.

(3) The topography shall permit an acceptable arrangement for the proposed number and type of units. If the topography of a proposed site raises serious doubt as to the suitability of the site, HUD may require the preparation of site feasibility study in order to establish whether the site can be utilized satisfactorily.

(g) *Subsurface Conditions and Natural Hazards.* (1) Where there is any evidence to suggest that a site may have unsuitable bearing qualities for foundations and/or underground utilities or excessive areas of rock to be excavated, tentative site approval shall not be requested from HUD until a preliminary examination of the adverse conditions has indicated that they can be overcome.

(2) No site shall be selected if the hazard of earthslides exists either on the site or on adjacent or nearby land.

(3) In regions where local experience shows loss of life or damage resulting from earthquakes, or in regions located in zones 1, 2 or 3 as shown on the Seismic Risk Maps provided in the HUD Minimum Property Standards, precautions in design shall be taken in accordance with the requirements of the HUD Minimum Property Standards.

(4) In general, subsurface soil investigations, if required, shall be undertaken as soon as tentative site approval is obtained from HUD. Professional competence in soils and foundation engineering shall be required for both the performance of the subsurface soil investigation and the evaluation of the results.

(5) Final site approval shall not be given unless HUD technical staff has determined that there is no reasonable risk of natural hazard or that such risk can be avoided through proper design and construction.

(h) *Flooding.* The Project shall not be built in an area that has been identified by HUD as having special flood hazards unless other reasonable sites are not available. Where it is necessary to use a site in such an area, the community must have entered the National Flood Insurance Program under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), and the Project must be covered by flood insurance under that Program.

(i) *Multi-Unit Sites Versus Scattered Sites.* (1) A Project may consist of a multi-unit site, or scattered sites, or a combination. A "multi-unit site" is a site for a multi-unit structure or structures, or where individual homesites are contiguous "Scattered sites" are where individual homesites are not contiguous.

(2) Basic considerations to be taken into account in selecting the type of sites are:

(i) Suitability for the type of occupancy intended (e.g., elderly);

(ii) The economical development and operation of the Project, including access roads and water and sewage disposal facilities.

(j) *Size of Sites.* (1) The size of a multi-unit shall be no greater than necessary to permit an acceptable arrangement for the proposed number and type of units.

(2) No individual homesite, whether a scattered site included in a multi-unit site, shall exceed one acre unless HUD approved the use of a larger site for acceptable reasons, such as compliance with local law or BIA regulations for trust or restricted lands or to meet sanitary design requirements; however, the amount to be included in Development Cost for such site shall not exceed the portion of the total cost of that homesite [or of its appraised value in the case of a contributed homesite] allocable to one acre.

(k) *Individually Owned Trust or Restricted Land.* A site on individually owned trust or restricted land shall not be approved by HUD unless HUD obtains written assurance from the BIA that, in its judgment, a valid lease executed by all necessary parties can be obtained within a reasonable time (3–6 months) after issuance of the tentative site approval. HUD may approve a site requiring a longer period of time if HUD determines that such longer period will not unduly delay the Project.

§ 805.217 Site approval.

(a) *Tentative Site Approval.* (1) The IHA shall request tentative HUD approval for each site by submitting a Preliminary Site Report on a form prescribed by HUD, including all required exhibits, and including the written approval of IHS or BIA when required under the Interdepartmental Agreement, or in connection with services or facilities to be provided by the IHS or the BIA. Tentative site approval shall not be given until the requirements for compliance with section 213 and with A–95 (where applicable) have been met (see § 805.206(b)).

(2) HUD shall notify the IHA as soon as possible of tentative approval, conditional approval, or disapproval of the proposed sites or portions thereof. The notification to the IHA shall specifically state any conditions to be met for final site approval. In the case of a scattered site Project, where an insufficient number of sites have so far been approved, notification to the IHA shall request that the matter be considered at a coordination meeting as soon as possible and that HUD be advised in writing whether tentative approval of all necessary sites can be achieved within the one year period for submission of an approvable Development Program. If HUD disapproves any proposed sites, it shall notify the IHA of the reasons for disapproval.

(3) HUD approval of a site is subject to compliance with applicable environmental procedures (see § 805.107).

(b) *Required Site Approval Before ACC.* (1) HUD shall not enter into an ACC before final site approval on all project sites, except in accordance with paragraph (b)(2) of this section. For purposes of HUD final site approval and execution of ACC, the BIA may give concurrence for final site approval conditioned only on subsequent execution of site leases or right-of-way easements. This conditional BIA concurrence will be sufficient for purposes of HUD final site approval.

(2) In the case of donated sites, or of contributed sites for which the MH Contribution Credit is $750 or less per site, HUD may permit final approval of trust or restricted land sites after ACC under these conditions: (i) All sites on the project have tentative site approval before ACC; (ii) at least 50 percent of the sites have final site approval before ACC; (iii) it is shown to the satisfaction of HUD that the balance of the sites will probably meet the requirements for final site approval no later than one year from execution of the Construction Contract; (iv) the Construction Contract shall provide that if all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor within one year from execution of the Construction Contract (or HUD-approved extension), the Construction Contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

(c) *Time of Acquisition or Leasing.* No site may be acquired or leased and no commitment shall be made to acquire or lease until final site approval by HUD and any required approvals from IHS or BIA, nor shall any such action be taken prior to execution of the ACC unless HUD so authorizes.

(d) *Commencement of Construction.* Construction shall not start on any units or trust or restricted land for which leases and necessary rights-of-way have not been obtained.

§ 805.218 Types of interest in land.

(a) *Sites on Trust or Restricted Land.* (1) Sites on tribally or individually owned trust or restricted land shall be leased to the IHA for a term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years). For sites on trust or restricted land, HUD may accept a Title Status Report furnished by the BIA in lieu of obtaining other vital information, opinions, certificates or policies.

(2) "Trust or restricted land" includes "tribal land" or "individually owned land" as defined in 24 CFR 131.1. "Tribal land" under 24 CFR 131.1 means land or any interest therein held by the United States in trust for a tribe, or land or any interest therein held by a tribe subject to federal restrictions against alienation or encumbrance. "Individually owned land" under 24 CFR 131.1 means land or any interest therein held by the United States in trust for an individual Indian, or land or any interest therein held by an individual Indian subject to federal restrictions against alienation or encumbrance, including allotted land.

(b) *Unrestricted Land.* Sites on unrestricted land may be either conveyed to the IHA in fee, or leased to the IHA for a term of not less than 50 years.

§ 805.219 Appraisals.

(a) *When Appraisals are Required.* If the amount to be charged to Development Cost for the site exceeds $750 per unit, an appraisal shall be made in accordance with the standards provided in this section, and in the case of an MH Project such amount shall not exceed the limitations stated in §§ 805.404(c) and 805.408(c)(1). If the cost of a site does not exceed $750 per unit, no appraisal shall be required unless HUD determines that an appraisal is required by law.

(b) *Performance of Appraisals.* The IHA shall submit a formal request for appraisal to HUD or BIA, as appropriate. When BIA appraisal service is available, appraisals shall be provided by the BIA in accordance with paragraph (c) of this section (unless HUD agrees to provide the services in whole or in part), and shall be accepted by HUD. Otherwise, all appraisals shall be provided by HUD.

(c) *Appraisal Standards*—(1) *Conformity with Appraisal Standards.* All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value shall be based on the best available data properly analyzed and interpreted.

(2) *Nature of Legal Interest in Land.* In valuing the property interest to be conveyed to the IHA, appraisals shall

give full consideration to the nature of the property interest, including any legal and market restrictions and restraints on alienation that affect market value. It shall be determined whether the interest to be conveyed to the IHA is fee simple title, an easement, a leasehold or another property right. In the case of tribally or individually owned trust or restricted land to be leased to the IHA, the appraiser shall report the value of the leasehold.

(3) *Market Data Comparables.* In the application of the application of the market data approach to valuation, a property shall be compared with properties that have been leased or sold recently in the same or competing market areas. However, value estimates shall not be predicated upon comparable sales or leases that involve the IHA either as seller or purchaser, or lessor or lessee.

(4) *Valuation of Trust or Restricted Land—Market Data Approach.* When the interest to be appraised is a leasehold interest in tribally or individually owned trust or restricted land and comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable land in the same or competing market areas. The value of the land as if marketable in fee shall be discounted to obtain an estimate of the value of the leasehold interest which is alienable. An acceptable estimate of the value of the leasehold shall not exceed ⅔ of the estimate of the value as if alienable in fee. This limit may be exceeded only with approval of the Assistant Secretary for Housing in exceptional cases where no other suitable sites are available.

§ 805.220 Financial feasibility of rental projects.

The financial feasibility test for a Rental Project, which must be met before a Development Program for the Project can be approved, shall be the test applicable to Projects subject to 24 CFR 890.101 et seq. (Performance Funding System). However, this requirement may be modified with the approval of the HUD Assistant Secretary for Housing in cases involving exceptional circumstances. The financial feasibility test for an MH Project is stated in § 805.404(j).

§ 805.221 Construction inspection.

(a) *IHA Inspections.* (1) Whatever the production method used, the IHA shall be responsible for providing inspections during construction (and sufficient development funds shall be provided for this purpose) which shall be performed by an architect, engineer or other qualified person. These inspections shall be performed with such frequency and under such procedures as the IHA determines with HUD approval are sufficient to assure completion of quality housing in accordance with the approved contract documents. IHA construction inspectors shall be selected by the IHA and approved by HUD.

(2) The IHA shall promptly forward a copy of each inspection report to HUD with comments on action taken to remedy deficiencies disclosed by the report. Because remote or scattered sites are sometimes used for Indian housing and inspections at such sites may be more expensive, HUD may approve, where necessary, a larger amount for the cost of IHA inspection than provided under regular program requirements.

(b) *HUD Site Visits.* HUD representatives shall make site visits from time to time, and shall make a report to HUD of each of their visits. HUD shall invite the BIA to send their representatives on these site visits for the purpose of reviewing the street construction quality control and progress. HUD shall send a copy of each report to the IHA, with HUD's recommendation of the action, if any, to be taken by the IHA. The HUD report shall include its evaluation of the adequacy of the IHA inspections and the IHA actions with respect thereto.

(c) *Inspection Upon Completion.* (1) The contractor shall notify the IHA in writing as to the date when, in his opinion, the contract work, or stage when applicable, will be completed and ready for final inspection. If the IHA determines that the state of the work is as represented, the IHA shall promptly notify HUD and request HUD's participation in the final inspection. The final inspection shall be made jointly by the representatives of the IHA, HUD and the contractor. In the case of an MH Project, each Homebuyer shall also be invited to participate in the inspection of his home, and shall be given a copy of the inspection report, but acceptance shall be by the IHA with HUD approval. When the BIA will have maintenance responsibility for any part of the project after completion, the BIA shall be invited to participate in the final inspection in order to determine whether the streets, curbs, gutters and drainage conform to the approved plans and specifications. Any deficiencies shall be corrected before final settlement with the contractor.

(2) If the inspection discloses no deficiencies other than punch list items, or items awaiting seasonal opportunity to complete, the IHA shall submit for HUD approval an Interim Certificate of Completion, which shall detail the items. The IHA shall also submit for HUD approval a proposed time schedule agreed to by the contractor for completion of the items. Upon HUD approval of the Interim Certificate and schedule for completion, the IHA may release the monies to the contractor less the withholdings required by the Construction Contract. The IHA may permit occupancy prior to IHA sign-off on all punch list items and items awaiting seasonal opportunity.

(3) The contractor shall complete the punch list items, and items awaiting seasonal opportunity to complete, in accordance with the time schedule for completion of the items as approved by HUD. The contractor will be paid for such items only after inspection and acceptance by the IHA and HUD approval; and the IHA shall not accept any items if there is a dispute as to whether such items have been completed. If the IHA is satisfied that the applicable requirements of the Construction Contract have been met, the IHA shall submit for HUD approval a Final Certificate of Completion and release to the contractor the amounts withheld with respect to such items in accordance with the applicable provisions of the Construction Contract.

§ 805.222 Inspections after acceptance and enforcement of warranties.

(a) The Construction Contract shall specify the warranty periods applicable to items completed as of the date of the approved Interim Certificate of Completion and to items completed after the date of the Interim Certificate; and shall also provide for assignment to the IHA of manufacturers' and suppliers' warranties covering equipment or supplies.

(b) The IHA shall inspect each dwelling unit no less often than every three months during the contractor's warranty period or periods, beginning three months after the date of the approved Interim Certificate of Completion, provided that there shall be a final inspection in time to exercise rights before expiration of the contractor's warranties (for MH Projects see also § 805.417(b)). These inspections shall cover all items under warranty as of the time of the inspection, including the items covered by the manufacturers' and suppliers' warranties, as well as those covered by the contractor's warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties. The costs to the

IHA of making the inspections provided for in this paragraph (b) shall be included in Development Cost.

§ 805.223 Cost to correct deficiencies.

(a) *Responsibility for Correction of Deficiencies.* Costs to correct deficiencies which are the responsibility of the contractor or of an MH Homebuyer shall be charged accordingly. Costs which are not chargeable to the contractor or to the Homebuyer can only be met by increasing the Development Cost with an amendment to the development cost budget where necessary, or by charging the costs to Project operating receipts. Such costs shall not be incurred without the specific approval of HUD.

(b) *Amendments.* (1) The Development Program and ACC may be amended to provide amounts needed to correct deficiencies (and damages resulting from the deficiencies) in design, construction or equipment where it is not possible to obtain timely correction or payment by the responsible parties.

(2) In the case of a MH home, the additional development cost for work done under this paragraph (b) shall not result in an increase in the Homebuyer's purchase price. However, before approving work on a MH home for correction of deficiencies, the Field Office may review the record of the Homebuyer's compliance with the MHO Agreement, and may require the IHA to reach an agreement with the Homebuyer for the correction of significant non-compliances.

Appendix I—Interdepartmental Agreement on Indian Housing

1. *Introduction.* Most assisted housing in Indian areas is made available under the low-income housing programs authorized by the United States Housing Act of 1937 (USH Act). For federally recognized tribes, the Bureau of Indian Affairs (BIA) in the Department of the Interior, and the Indian Health Service (IHS) in the Department of Health, Education, and Welfare furnish the principal necessary additional services. The purpose of this Interdepartmental Agreement is to set forth the responsibilities of the signatory agencies, having in mind that the financial and contractual relationships for assisted housing under the USH Act are between HUD and the IHAs and their tribal governments and that this Agreement contemplates promotion of the independent initiative and responsibilities of the IHAs and tribal governments involved. In addition, this Agreement specifies the responsibilities of IHS concerning water supply and sewerage facilities not only for HUD-supported housing but also for the BIA-Housing Improvement Program (HIP).

2. *HUD Responsibilities.* Except as specified in this Agreement, HUD will assume all responsibilities for projects of IHAs of federally recognized tribes under the USH Act that it normally does for any project under the USH Act.

3. *Coordination of Agencies.*

a. Before issuing the Program Reservation,[1] HUD will request the IHA to specify the time and place for a meeting of the IHA with representatives from HUD, BIA, IHS and any other agencies that may be involved. The time and place will be determined by the IHA and furnished to HUD after consultation with all participants. When HUD issues the Program Reservation, it shall send a notice to all the participants of the time and place for the meeting.

b. The purpose of the meeting will be to decide on the production method and to establish a time schedule of all necessary actions to be taken by the IHA and the Federal agencies leading to the start of construction and all subsequent actions to be taken during the total development period. These actions will include but not be limited to: Site review, selection and development as they relate to the provision of water, sewer, house placement, access roads and streets where applicable; Homebuyer training program; development program; execution of Annual Contributions Contract; execution of Construction Contract; construction schedule; and inspections during construction and upon completion.

c. The time schedule agreed to at this meeting will be signed by each participant on behalf of his agency and by a representative of the IHA, and each participant agency and the IHA will thereby agree to meet that schedule. Any departure from the schedule must be for good cause and justified in writing by the head of the HUD field office, the Chairman of the IHA, the BIA Area Office Director or the IHS Area Director, as the case may be.

d. Complaints concerning compliance with the time schedule or performance of functions by the participating agencies may be made in writing to the head of the HUD field office and, in that event, it shall be his responsibility to resolve the matter. Complaints and the action taken with respect thereto shall be included in the monthly report required under paragraph e.

e. A monthly production progress reporting system on HUD-assisted projects compatible with the needs of HUD, BIA and IHS will be established by HUD in consultation with the other agencies and implemented within 90 days of the effective date of the HUD Indian Housing Regulations.

4. *Related Statutory Requirements.* The Departments of Housing and Urban Development; Health, Education, and Welfare and the Interior shall develop memoranda of agreement, which shall be made a part of this Agreement, relating to compliance with the Flood Disaster Protection Act of 1973, the National Environmental Policy Act, the 1974 Historic and Archeological Data Preservation Act, the National Historic Preservation Act of 1966, the Act for the Preservation of American Antiquities, and related Executive Orders. Until such time as they are approved, each Department shall be responsible for following its own applicable procedures in such manner as to avoid or minimize delays. Required clearances to comply with these Acts will be included in the time schedule worked out at the Interdepartmental coordination meeting (see paragraph 3b).

5. *Homebuyer Training Programs.* An IHA may elect to use, without additional HUD approval, the HUD pre-approved BIA Homebuyer Training Program (HTP). The BIA will assist with this program in accordance with responsibilities enumerated in the Exhibit to this Agreement.

6. *Other BIA Functions.*

a. *Site Selection and Land Acquisition Services.* The BIA will assist an IHA with site selection and land acquisition services, including title evidence and furnishing the site lease forms for both HUD rental and homeownership projects.

b. *Appraisals.* When requested by an IHA, the BIA will perform appraisals of the proposed sites in accordance with the HUD and BIA regulations.

c. *Roads.* The BIA will carry out its responsibilities under applicable regulations of the Department of Interior for providing roads, including access roads, which are not the responsibility of HUD under the HUD regulations.

d. *Management Services.* Although there is no commitment by the BIA for the furnishing of assistance in the management and operation of IHA projects, it is understood under this Agreement that where the BIA has staff or facilities available to provide such assistance and an IHA requests such assistance, the BIA will provide it to the extent feasible.

7. *Audits.*

a. The Office of Audit and Investigation (OAI) in the Department of the Interior, will provide audits of IHAs of federally recognized tribes until federal fiscal year 1977. The scope of these audits will be limited as follows:

(1) As a general rule, the audits will omit confirmation procedures for tenants' accounts receivable. The audit opinion will be qualified or a disclaimer will be made in those instances where receivables are material. Other tests and analyses applicable to receivables will be applied, such as review of billing procedures and aging receivables and evaluation of collection efforts. If results of these tests indicate the possibility of serious error or potential for fraud, OAI will attempt confirmation.

(2) Upon request of OAI, HUD will confirm the balance of outstanding notes for the construction of the projects and of HUD contributions surplus accounts.

b. Audits will be scheduled only upon receipt of required financial statements. HUD procedures will provide that the IHA furnish a copy of its financial statement to OAI at the times it is furnished to HUD.

c. Audits will not be performed at those IHAs, such as in Oklahoma and Alaska, which are not located on Federal Indian reservations.

d. HUD will assume responsibility for the audit of IHAs beginning with fiscal year 1977.

8. *Water Supply and Sewage Facilities.*

a. *General.* The IHS has general responsibility to provide water supply and sewage facilities for those Indians and

[1] See § 805.206(b)(2) of the Regulation.

Alaska Natives who are eligible to receive such benefits under the Indian Sanitation Facilities and Construction Act (Pub. L. 86–121). The IHS will exercise this responsibility with respect to facilities required to serve Indian homes constructed or improved with the support of HUD or BIA to the extent that funds are specifically appropriated by the Congress for such facilities and as agreed upon under the terms of this Agreement.

b. *Planning for Budget Purposes.* Sixteen months prior to the beginning of a fiscal year during which IHS will be required to furnish sanitation facilities, HUD and BIA will, to the extent possible, advise IHS with respect to the number and, where possible, the location of HUD-assisted housing starts and of HIP units of housing improvement to be started during that fiscal year. (If the information cannot be provided at that particular time, HUD and BIA will notify the IHS Director in writing accordingly.) IHS will use this information in developing its budget request to assure that adequate funds are included to support construction of all necessary sanitation facilities for HUD-assisted and HIP housing units.

c. *Evaluation of Housing Site and Determination of Type of Facility to be Provided.* (1) The ability of the IHA to provide needed water supply and waste facilities is dependent on the availability of a water source of suitable quantity and quality and a means of sewage disposal which will conform to acceptable standards and can be developed within reasonable cost limits. Therefore, the IHS shall be consulted with respect to the general site plan for new housing units and shall review and concur in the site selection.

(2) It shall be the responsibility of the IHS to determine, following its review of the site in each case, whether community or individual type facilities or a combination of these, can best serve the housing units concerned.

(3) IHS's review and approval of sites, along with any recommendations and observations concerning water and sanitation facilities, will be furnished the IHA, which shall in turn forward this material to HUD as part of the Preliminary Site Report submission.

d. *Technical Requirements.* To minimize the cost of providing and maintaining water supply and sewage facilities, the following criteria shall apply:

(1) Wherever possible, project sites will be on or adjacent to existing community water and sewer systems.

(2) Economic feasibility of water and sewer installations shall be considered in site selection. Feasibility shall be determined on the basis of initial construction as well as long range costs of operation, maintenance and replacement. Overly expensive and complex utility installation shall be avoided.

(3) Whenever possible and practicable, dwelling units within a multi-unit project site will be located on both sides of the street.

e. *Test Well Drilling.* Whenever it is determined by the IHS that test drilling is required for wells to provide individual water facilities for housing supported by HUD, tentative site approval may be given subject to the results of the test drilling. Should the test drilling indicate an insufficient supply of potable water, the site shall be disapproved and another selected unless another suitable water source can be provided. All test drilling, including obtaining of necessary permits or authorizations, shall be performed by and at the expense of the HUD program and carried out in accordance with accepted practices in the area concerned, and the data obtained shall be furnished to the IHS. For all community water facilities, including facilities for HUD-assisted projects and for individual wells to be provided for BIA sponsored housing, the IHS will perform at its expense any test drilling required.

f. *Soil Percolation Tests.* Soil percolation tests are necessary to ascertain the suitability of a home site for septic tank and drainfield facilities. The test will be conducted by, or at the expense of, the IHS. The data obtained will be provided to the IHA with IHS's recommendations for accepting or rejecting the site. (IHS's concurrence is required as a condition for use of the site, see paragraph 8c(1) above.)

g. *Individual House Facilities.* In those instances where the IHS determines that individual water supply and/or waste disposal facilities are the most feasible and should be provided, the following conditions will apply:

(1) The agency financing the house construction or improvement will be responsible for the installation of all plumbing facilities within the dwelling and the house service lines.

(2) In the case of BIA–HIP homes, the IHS will provide the on-site water supply and waste disposal facilities along with service lines to a point five feet from the house.

(3) In the case of HUD-supported homes, the housing project will include the cost of installing any water supply and/or sewage disposal facilities which are to be located on the individual house sites. These facilities would include individual water supplies, sewage disposal systems or service lines to the house. All such work is to be carried out in accordance with guides and recommendations furnished by the IHS regarding the location and design of the facilities. These guides and recommendations will be provided by the IHS, following site review, to the IHA.

h. *Community Systems.* All community water and sewer systems will be designed on the basis of a total community concept. The following conditions will apply:

(1) The agency financing the house construction or improvement will be responsible for the installation of all plumbing facilities within the house and the house service lines.

(2) Where HUD-financed new houses are interspersed with existing homes, HUD will fund a pro rata share of the system's cost, excluding water source development, treatment and storage, and sewage treatment facility. This share will be based on the ratio of new to existing homes and will not exceed the cost of equivalent individual type facilities.

(3) Where the systems serve only new HUD-financed houses, HUD will fund the total cost of water distribution and sewage collection systems located within the boundaries of the project. The cost of all necessary facilities outside the housing project boundary will be funded by IHS.

(4) Community systems servicing BIA–HIP homes will be provided by IHS.

i. *Plan Review and Approval.*

(1) In those instances where the housing project includes the cost of installing individual or on-site water and sewer facilities, approval must be obtained from the IHS Area Office on all final plans before advertisement for construction bids. The IHS at its expense will inspect the installation of these facilities during construction and after completion of the work to assure the IHA that the installation has been done in conformance with the plans and specifications and may be accepted.

(2) If connection to BIA water and/or sewage system is contemplated, a joint feasibility study will be conducted by the BIA and IHS to determine the adequacy of existing facilities to meet the additional requirements, to recommend necessary improvements or additions and to determine points of master or individual metered connections, valving, flushing hydrants, etc., in order to insure compatibility with existing systems. If the system is not adequate, the IHS and BIA will develop a mutually agreed upon program for providing additional capacity.

(3) Responsibility for the acquisition of land or interest therein in connection with the provision of water and sewage facilities for HUD-assisted housing shall not be assumed by the IHS, BIA, or HUD.

Dated: February 7, 1976.

Thomas S. Kleppe,

Secretary, Department of the Interior.

Dated: February 20, 1976.

David Mathews,

Secretary, Department of Health, Education, and Welfare.

Dated: March 2, 1976.

Carla A. Hills,

Secretary, Department of Housing and Urban Development.

Exhibit to the Interdepartmental Agreement—BIA Homebuyer Training Program

1. *Scope of Program.* The HUD-approved BIA Homebuyer Training Program (HTP) will provide pre-occupancy and post-occupancy training to Homebuyer families in Mutual Help Projects and shall consist of the following:

a. *Training in the Mutual Help Program.* Training will be provided to explain the Mutual Help Program and the rights and obligations of the Homebuyers.

b. *Training in Home and Appliance Maintenance and Care.* Training will be provided to increase the knowledge and understanding of Homebuyers of the methods and means to properly care for and maintain (1) both the interior and exterior structures of the Home including electrical, plumbing (including water heaters and pumps) and heating systems; (2) major appliances, refrigerators, ranges and dishwashers; (3) minor appliances, such as can openers and toasters; and (4) yards and gardens. In addition, training will be provided to

Homebuyers to increase their knowledge about simple repair techniques with regard to the above-mentioned house components and equipment.

c. *Training in Budgeting and Financial Management.* Training will be provided to Homebuyer families on family budgeting, use of credit, and meeting financial obligations, including their responsibility to make the required monthly payments and to allocate funds to various other necessities, such as utilities.

d. *Information and Referral Services.* Homebuyers will be given information on and, where appropriate, will be assisted by referrals to, other local, state and Federal agencies whose programs relate to total family counseling, and social service, including services on problems such as alcoholism, drug abuse, etc.

2. *Implementation of Program.*

a. *General.* The HTP will be implemented according to the schedule established under paragraph 3 of the Agreement in accordance with the following: (1) An IHA will submit a proposal to the BIA which will set forth the specific needs of Homebuyers, the scope of training, methodology and budget to be undertaken within the general guidelines stated above.

(2) The program shall be developed and implemented at the local level by the IHAs employing locally recruited members of the community to the maximum extent possible.

(3) The program may be carried out through individual home visits, demonstration or other group sessions, or by any combination of these deemed appropriate.

(4) The BIA shall assist the IHAs in obtaining the necessary training and instruction for their training staff who will carry out the program. Such training of IHA employees may be undertaken through IHS training centers at universities or other institutions which can provide the needed training.

b. *Progress Reports.* IHAs shall submit quarterly progress reports to BIA and to HUD, which shall include:

(1) A list of expenditures under the program, including salaries, cost of transportation, training materials, office expenses and other justifiable expenditures. All expenditures must be identified and supported by appropriate books and records of the IHA and must be certified as correct by the Executive Director and the Chairman of the IHA.

(2) Names of Homebuyer participants, the number of training sessions, descriptions of training activities, degree of participation, deficiencies noted, and other relevant information or observations.

(3) Efficiency of training as shown by reports, results of tests, reduction in monthly payments delinquencies, reduction in maintenance costs or other factors.

(4) Proposed changes during the next period of training, including program changes to overcome deficiencies described in current or prior report(s) or called to the attention of the IHA previously by BIA and to provide training to any additional or substitute Homebuyers.

c. *BIA Responsibilities.* The BIA will monitor and evaluate the progress and the implementation of the HTP and IHAs and submit semi-annual reports to HUD. Should BIA judge that an IHA is not implementing the program consistent with these guidelines, it will:

(1) Notify the IHA of the deficiencies in its program implementation and provide the necessary assistance to it to assure proper implementation.

(2) Afford the IHA 90 days from the date of notification to take corrective action, and

(3) Report to HUD whether the program should be continued based on the corrective action or whether the program should be terminated.

d. *HUD Responsibilities.* HUD will be responsible for including in the Development Cost of a Project the funds for the HTP, provided that the BIA will not be reimbursed for utilization of its staff or facilities. HUD will also be responsible for determining whether the program for a particular project shall be terminated on the basis of information provided pursuant to paragraph c above, or otherwise.

Subpart C—Operation

§ 805.301 Definitions.

See §§ 805.102 and 805.430.

§ 805.302 Admission policies.

(a) *Income and Assets Limits.* (1) Subject to approval by HUD, the IHA shall adopt and promulgate regulations establishing schedules of maximum income limits for admission of tenants or Homebuyers. An IHA may establish income limits up to the maximum permitted by the Act, which limits admission to families of low income who cannot afford to pay enough to cause private enterprise in the Indian Area or build an adequate supply of decent, safe and sanitary dwellings for their use. In determining the income limits for admission, consideration shall be given to any relevant limitations in the local private housing market (such as an insufficient supply of standard private housing, or the unavailability of mortgage financing on trust or restricted land). An IHA may also adopt regulations establishing reasonable assets limits for admission to occupancy. A copy of the IHA's income and assets regulations shall be posted prominently in the IHA's office for examination by prospective tenants or Homebuyers.

(2) Where decent, safe and sanitary housing is not otherwise being provided in the Indian area even for those of relatively high income, the IHA may establish maximum income limits at a sufficiently high level to meet those needs. In submitting such income limits to HUD for approval, the IHA may furnish a certification that private (conventional, FHA or VA) or Farmers Home Administration financing is not available to the prospective tenants or Homebuyers along with such other supporting evidence as its deems appropriate. HUD shall not disapprove such income limits on the ground of their being too high unless it finds that the IHA certification is incorrect.

(b) *Other Admission Policies.* (1) The IHA shall adopt and promulgate regulations establishing the IHA's policies for admission of tenants or Homebuyers. Such regulations shall specify the types of Projects to which they apply (i.e., Rental, MH, or Turnkey III). A copy of the regulations shall be posted prominently in the IHA's office for examination by prospective tenants or Homebuyers, and shall be submitted to HUD promptly after adoption by the IHA.

(2) These regulations shall be designed:

(i) To attain at initial occupancy, or within a reasonable period of time for Projects beyond the state of initial occupancy (but without prejudice to contract rights of Homebuyers in Turnkey III or MH Projects), a tenant or Homebuyer body in each Project composed of families with a broad range of incomes and rent-paying ability which is generally representative of the range of incomes of those low income families in the Indian area who would be qualified for admission to the type of project (Rental or Mutual Help);

(ii) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's Projects;

(iii) For Rental and Turnkey III Projects, to achieve compliance with the applicable provisions of 24 CFR Part 860, Subpart D, Minimum and Maximum Rent-Income Ratios, and Minimum Rent Requirements, including, but not limited to, § 860.406 which provides that "at least 20 percent of the dwelling units in any project placed under Annual Contributions Contract in any fiscal year beginning after (September 26, 1975) shall be occupied by very low-income families * * *;" and

(iv) So that at least 20 percent of the dwelling units in any MH Project placed under ACC after September 26, 1975 shall be occupied by very low income families, i.e., families whose incomes do not exceed 50 percent of the median income of those families in the Indian area whose incomes would qualify them for admission to a Mutual Help project.

805.303 Grievance procedures.

The requirements set forth in HUD regulations relating to procedures for the resolution of tenant or Homebuyer grievances against Public Housing Agencies (24 CFR Part 866) are not applicable to Projects under this part.

Each IHA shall adopt and promulgate grievance procedures which are appropriate to local circumstances, provided that such procedures shall afford all tenants and Homebuyers a fair and reasonable opportunity to have their grievances heard and considered by IHA officials, and shall comply with the Indian Civil Rights Act. A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to a tenant or homebuyer upon request.

§ 805.304 Determination of rents and Homebuyer payments.

(a) *Rental and Turnkey III Projects.* The amount of rent or Homebuyer payment required of a tenant in a rental Project or a Homebuyer in a Turnkey III Project shall be determined in accordance with the provisions of 24 CFR Part 860, Subpart D.

(b) *MH Projects.* The amount of the Required Monthly Payment for a Homebuyer in an MH Project placed under ACC on or after the effective date of this Part and a Homebuyer admitted to occupancy in an Existing Project on or after the effective date of the conversion of the Project in accordance with § 805.428 shall be determined in accordance with § 805.416.

(c) *Examination and Reexamination of Family Income.* For purposes of determining rent and Homebuyer payment amounts under paragraphs (a) and (b) of this section, making adjustments in the amounts so determined, and determining whether an MH Homebuyer is required to purchase the home under § 805.422(e), the IHA shall examine the family's earnings and other income prior to initial occupancy, and shall make periodic reexaminations thereaftger at least once a year, except as follows:

(1) The date of the first reexamination may be extended to not more than 18 months after the initial examination, if necessary to fit a reexamination schedule established by the IHA.

(2) For families whose heads (or spouses) or whose sole members are 62 years of age or over, the reexaminations need not be more often than once every two years.

For each examination or reexamination, the tenant or Homebuyer shall furnish to the IHA certification of his family's earnings and other income and family composition, including any information and evidence required by the IHA.

§ 805.305 Rent and Homebuyer payment collection policy.

Each IHA shall adopt and promulgate, and shall use its best efforts to obtain compliance with, rules or regulations sufficient to assure the prompt payment and collection of rents and required Homebuyer payments. A copy of the rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or Homebuyer upon request. The rules or regulations shall include provisions on at least the following subjects:

(a) The time, place and method for payment.

(b) A statement to the effect that prompt payment is a requirement for continued occupancy.

(c) For tenants or Homebuyers whose income is seasonal or otherwise irregular, provisions for special plans or schedules for assuring that the required payments are made when due, e.g., prepayment, or arrangements with public welfare agencies regarding public assistance payments.

(d) Procedures for counseling and assistance to tenants and Homebuyers so as to minimize the need for resort to the remedy of eviction.

(e) Procedures for enforcement of tenant and Homebuyer obligations to make payment, including procedures for eviction where necessary.

(f) Procedures for collection of amounts remaining due and unpaid from terminated tenants and Homebuyers.

(g) Procedures for assistance by the tribal government in accordance with the provision of the tribal ordinance that "the powers of the Tribal Government shall be virgorously utilized to enforce eviction of a tenant or Homebuyer for nonpayment or other contract violations including action through the appropriate courts."

§ 805.306 Maintenance and improvements.

(a) *General.* Each IHA shall adopt and promulgate, and shall use its best efforts to obtain compliance with, rules or regulations to assure full performance of the respective maintenance responsibilities of the IHA and tenants or Homebuyers. A copy of such rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or Homebuyer upon request.

(b) *Provisions for Rental Projects.* For Rental Projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(1) A statement specifying the responsibilities of tenants for normal care and maintenance, if any, of their dwelling units and common property, if any.

(2) Procedures for handling maintenance service requests from tenants.

(3) Procedures for IHA inspections of dwelling units and common property, if any.

(4) Special arrangements, if any, for obtaining maintenance services from outside workmen or contractors.

(5) Procedures for charging tenants for damages for which they are responsible.

(c) *Provisions for MH and Turnkey III Projects.* For MH and Turnkey III Projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(1) A statement specifying the responsibilities of Homebuyers for maintenance and care of their dwelling units and common property, if any.

(2) For Turnkey III Projects only, procedures for handling service requests from Homebuyers for nonroutine maintenance.

(3) Procedures for providing advice and technical assistance to Homebuyers to enable them to meet their maintenance responsibilities.

(4) Procedures for IHA inspections of homes and common property, if any.

(5) Procedures for IHA performance of Homebuyer maintenance responsibilities (where Homebuyers fail to satisfy such responsibilities) including procedures for charging the Homebuyer's proper account for the cost thereof.

(6) Special arrangements, if any, for obtaining maintenance services from outside workmen or contractors.

(7) Procedures for charging Homebuyers for damages for which they are responsible.

(d) *IHA Responsibility in MH and Turnkey III Projects.* The IHA shall enforce those provisions of a Homebuyer's agreement under which the Homebuyer is responsible for maintenance of the home. The IHA shall have overall responsibility to HUD for assuring that the housing is being kept in decent, safe and sanitary condition, and that the home and grounds are maintained in a manner that will preserve their condition, normal wear and depreciation excepted. Failure of a Homebuyer to meet his obligations for maintenance shall not relieve the IHA of responsibility in this respect. Accordingly, the IHA shall conduct a complete interior and exterior examination of each home at least once a year, and shall furnish a copy of the inspection report to the Homebuyer. The IHA shall take appropriate action, as needed, to remedy conditions shown by the inspection, including steps to assure performance of the Homebuyer's obligations under the Homebuyer's agreement.

§ 805.307 Procurement and administration of supplies, materials and equipment.

(a) Each IHA shall adopt and promulgate, and shall comply with, rules or regulations for the procurement and administration of supplies, materials and equipment, which shall contain provisions on at least the following subjects:

(1) Procedures for purchasing in cases where competitive bidding is required.

(2) Identification (by position title) of IHA officials authorized to make purchases when competitive bidding is not required, and procedures for making such purchases.

(3) Procedures for inventory control.

(4) Procedures for storage and protection of goods and supplies.

(5) Procedures for issuance of other disposition of supplies and equipment.

A copy of such rules or regulations shall be promptly furnished to HUD.

(b) In the purchasing of equipment, materials and supplies, and in the award of contracts for services or for repairs, maintenance and replacements, the IHA shall comply with all applicable laws, and in any event shall make such purchases and award such contracts only to the lowest responsible bidder after advertising a sufficient time in advance for proposals, except:

(1) When the amount involved does not exceed an amount prescribed from time to time by HUD; or

(2) When the public exigencies require immediate delivery of the articles or performance of the service; or

(3) When only one source of supply is available and the purchasing or contracting officer of the IHA has so certified; or

(4) When the services required are (i) of a technical and professional nature, or (ii) to be performed under the IHA supervision and paid for on a time basis.

§ 805.308 Correction of management deficiencies.

IHA shall promptly take such action as may be required or approved by HUD to remedy management deficiencies. Particular attention shall be given to the correction of serious deficiencies in any of the following: Physical maintenance of the property, occupancy practices, maintenance of accounts and records, cost controls, handling of funds, rent or Homebuyer payment collection, required reports to HUD, IHA staffing and staff turnover, and tribal government cooperation. HUD shall provide the maximum feasible assistance to an IHA to remedy management deficiencies.

§ 805.309 Indian preference in contracting.

The provisions of § 805.204 shall apply to contracts in connection with the operation of a Project.

§ 805.310 Contracts for personal services.

The IHA shall not without the prior written approval of HUD enter into, execute or approve any agreement or contract for personal, management, legal or other services with any person or firm (a) where the initial period or term of the agreement or contract (including any renewal) is in excess of two years, or (b) where the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget or operating budget or an amount specified from time to time by HUD, as the case may be, or (c) where the agreement or contract is for legal or other services in connection with litigation.

§ 805.311 Operating subsidy—MH projects.

(a) *Scope.* This section provides for determination of operating subsidy on a uniform basis for all MH Projects, including Existing Projects whether or not converted in accordance with § 805.428.

(b) *Eligible Costs.* Operating subsidy shall be paid to reimburse the IHA for the HUD-approved costs of Independent Public Accountant audits. Operating subsidy may also be paid to cover proposed expenditures approved by HUD for the following purposes.

(1) Administration Charges for vacant units where the IHA shows to HUD's satisfaction that it is making every reasonable effort to fill the vacancies.

(2) Collection losses due to payment delinquencies on the part of Homebuyer families whose MHO Agreements have been terminated, and who have vacated the home, and the actual cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a substitute Homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously utilized all available Homebuyer credits.

(3) The costs of HUD-approved Homebuyer counseling but not in duplication of Homebuyer Counseling costs funded under a Development Cost Budget (pursuant to § 805.412 or § 805.429).

(4) HUD-approved costs for training of IHA staff and Commissioners.

(5) Operating costs resulting from other unusual circumstances, as determined by HUD, justifying payment of operating subsidy.

(c) *Ineligible Costs.* No operating subsidy shall be paid for utilities, maintenance or other items for which the Homebuyer is responsible (other than necessary to put a vacant home in condition for a substitute family as provided in paragraph (b)(2) of this section).

§ 805.312 Operating subsidy—other projects.

Operating subsidy for Projects other than MH Projects shall be determined under the applicable regulations.

Subpart D—Mutual Help Homeownership Opportunity Program

§ 805.401 Scope and applicability.

(a) *Scope.* This Subpart sets forth the requirements applicable to the Mutual Help Homeownership Opportunity Program. For any matter not covered in this Subpart see also the provisions of Subparts A, B, and C of this part.

(b) *Applicability.* The provisions of this subpart shall be applicable to all MH Projects placed under ACC on or after the effective date of this part, and any Existing Projects converted in accordance with § 805.428.

§ 805.402 Definitions.

See §§ 805.102 and 805.430.

§ 805.403 Contractual framework.

A MH Project involves three basic contracts: An ACC for a MH Project, a MHO Agreement and a MH Construction Contract, each in the form prescribed by HUD.

§ 805.404 Special provisions for development of an MH Project.

(a) *Application for Project.* An application for an MH Project shall include, in as much detail as possible, a tentative listing of the family size and incomes of the families who will be eligible and willing to participate as MH Homebuyers, and the expected sources, forms and amounts of their MH Contributions. The application shall state that the listing is supported by signed applications of the families.

(b) *Inclusion of MH Contribution in Development Cost.* The total amount of the MH Contributions shall be included in the Development Cost for an MH Project. The Development Cost Budget shall state in total and separately the portion of the Total Development Cost to be attributed to the land, cash, materials, equipment, and MH work to be furnished by or in behalf of the Homebuyers as their MH Contributions.

(c) *Purchase of Sites.* (1) An IHA may purchase a homesite (subject to the limitation stated in paragraph (c)(2) of this section), if neither the tribe nor the

Homebuyers can donate or contribute enough sites suitable for Project use.

(2) In the case of purchased homesites, the cost of an unimproved homesite to be charged against the Development Cost Budget shall not exceed 8.75 percent of the estimated Dwelling Construction and Equipment Cost (DC&E Cost) allocable to the dwelling unit or $1,500, whichever is higher, unless it is shown to the satisfaction of HUD that the topographic features of the site are such that the excess cost will be offset by the savings in the cost of site improvements. The cost for purchase of an improved or partially improved homesite may be approved by HUD if the purchase price, together with any cost of further site improvement, is reasonable in relation to the estimated DC&E Cost and is consistent with an acceptable Total Development Cost.

(d) *Availability of Sites for Use by Substitute Homebuyers.* Each homesite shall be legally and practicably available for use by a substitute Homebuyer. If a site is part of other land owned by the prospective Homebuyer, the lease or other conveyance to the IHA shall include legal right of access to the site by any substitute Homebuyer.

(e) *Alternate Sites and Substitution of Sites.* (1) In order to minimize delay to the Project in the event of the withdrawal of a selected Homebuyer or an approved site, the IHA should have available a reasonable number of alternates. (2) No substitution of a site shall be permitted after final site approval unless the change is necessary by reason of special circumstances and only with HUD approval of (i) the substitute site and (ii) a showing that the change will not unreasonably add to the cost of the Project.

(f) *Time for Acquisition of Contributed or Donated Sites.* Contributed or donated sites shall (with only those exceptions allowed in accordance with § 805.217(b)) be leased or conveyed to the IHA before execution of the Construction Contract.

(g) *Consultation with Homebuyers.* The IHA shall be responsible for determining the extent to which Homebuyers or their representatives should be given an opportunity to comment on the planning and design of the homes. Any recommendations resulting from such consultation shall be consistent with HUD standards and cost limitations and shall be subject to IHA and HUD approval.

(h) *Execution of MHO Agreements.* MHO Agreements may be executed prior to ACC. Where MHO Agreements have not been executed prior to ACC, they shall be executed as promptly as possible after ACC.

(i) *Cost of Counseling Program.* The Development Cost of an MH Project shall include an amount not in excess of $500 multiplied by the number of Homes in the Project for a counseling program as required by § 805.429.

(j) *Financial Feasibility.* The Development Program shall include a demonstration by the IHA that there is a sufficient number of selected Homebuyers who are able and willing to pay the Administration Charge and meet the other obligations under MHO Agreements (see § 805.406(b)) and who have signed statements that they are willing to enter into MHO Agreements. However, this requirement may be modified with the approval of the HUD Assistant Secretary for Housing in cases involving areas of exceptionally low income or other exceptional circumstances.

(k) *Rights Under MHO Agreement if Project Fails to Proceed.* Any MHO Agreement shall be subject to revocation by the IHA if the IHA or HUD determines not to proceed with the development of the Project in whole or part. In such event any contribution made by the Homebuyer or tribe shall be returned.

§ 805.405 Financing of development cost.

(a) Development Cost shall be financed by issuance of notes, and not by issuance of bonds.

(b) Under the ACC, HUD agrees to advance funds from time to time to the IHA upon a showing by the IHA that the funds requisitioned by the IHA are needed for the development of the Project. This commitment is called the Project Loan, and the IHA note evidencing the borrowing from HUD is called a Project Loan Note.

(c) HUD may at any time require the IHA to obtain loans from sources other than HUD, in lieu of advances from HUD, secured by a pledge of HUD's agreement under the ACC to advance monies to the IHA. The IHA note evidencing such borrowing from non-HUD sources is called a Project Note.

§ 805.406 Selection of MH homebuyers.

(a) *Admission Policies.* In adopting admission regulations in accordance with § 805.302, an IHA may establish admission policies for MH Projects which are different from those for Rental or Turnkey III Projects of the IHA, including different income and assets limits.

(b) *Ability to Meet Homebuyer Obligations.* A family shall not be selected for MH housing unless, in addition to meeting the maximum income limits and other requirements for admission (see § 805.302), the family is able and willing to meet all obligations of an MHO Agreement, including the obligations to perform or provide the required maintenance, to provide the required MH Contribution and its own utilities, and to pay the Administration Charge (unless such requirements are modified in exceptional cases in accordance with § 805.404(j)). A family may be selected even if the Administration Charge alone, would exceed 25 percent of Family Income, if the family can be expected reasonably to pay the Administration Charge and meet its other obligations under the MHO Agreement (e.g., as demonstrated by the family's income, including public assistance, the family's past history, or the family's ability to supplement its income by providing its own food, fuel or other necessities).

(c) *MH Waiting List.* (1) Families who wish to be considered for selection for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a Rental Project of the IHA, must also submit an application for selection in order to be considered for MH Projects.

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting lists, of families which have applied for MH housing and which have been determined to meet the admission requirements.

(3) All applications for selection for MH housing shall be dated as received; except that an application from a family on the waiting list for any other IHA Project shall have the same date of application as the date of its application for such other IHA Projects.

(4) The filing of an application for MH housing shall be which is an applicant for other IHA housing, or is a tenant in such housing, shall not in any way affect its status with regard to such other housing. Such applicant shall not lose its place on another IHA housing waiting list until it has been selected for MH housing and the MHO Agreement has been signed.

(d) *Making the Selections.* Promptly after HUD approval of the application for a Project, the IHA shall proceed with selection of as many Homebuyers as there are homes in the Project. Selection of Homebuyers shall be made from the MH waiting list in accordance with the date of application and other pertinent factors under the IHA's admissions regulations established in accordance with § 805.302. Selection of a Homebuyer shall be made only after the site for that Homebuyer has received HUD final site approval and the form of

MH Contribution to be made by that Homebuyer has been determined.

§ 805.407 Notification to applicant families.

(a) *Notification to Families Not Meeting Admission Requirements.* When an IHA determines that a family does not meet the admission requirements, the IHA shall give the family prompt written notice of this determination. The notice shall state the basis for the determination, and shall state that the family is entitled to an informal hearing by the IHA on the determination if request for such hearing is made within a reasonable time as specified in the notice.

(b) *Notification to Selected Families.* A selected family shall be given a written Notice of Selection including the following information.

(1) A statement that the family has been selected for an MH Project and that the site for the family (identify) has been approved;

(2) A statement of approval of the form of the MH contribution proposed to be provided by or on behalf of the family;

(3) A statement that the family shall return the enclosed statement of willingness to execute an MHO Agreement and the name(s) of the person(s) who must sign the statement on behalf of the family;

(4) A statement that the family will be advised at a later date of the time and place for training activities and execution of the MHO Agreement and the name(s) of the person(s) who must execute it on behalf of the family;

(5) A statement that the family's eligibility shall be subject to verification at the time of execution of the MHO Agreement and will not thereafter be subject to reverification;

(6) A statement that after execution of the Construction Contract the family will receive a notice of confirmation which will state the estimated date of completion of the unit designated for the Homebuyer, insofar as such date can be reasonably determined; and

(7) A statement that the issuance of the Notice of Selection does not constitute or give rise to any contractual obligation of the part of the IHA or HUD.

(c) *Notification to Families Not Selected for a Project.* If the IHA determines that an applicant meets the admission requirements but is not to be selected for a certain MH Project, the IHA shall so notify the applicant in writing. The notice shall also state that, the applicant will remain on the IHA's waiting list for consideration for admission in the event of vacancies or additional MH housing.

§ 805.408 MH contribution.

(a) *Form of Contribution.* MH Contributions toward the Development Cost of a Project may be in the form of (1) land, (2) work, (3) cash, or (4) materials or equipment. Contributions other than work may be made by a tribe on behalf of Homebuyers. The IHA may determine that the MH Contributions to a Project shall consist either wholly of any of these forms of contribution, or of any combination of these forms of contribution. The amount of each form of MH Contribution shall be specified in the Development Program and Development Cost Budget for the Project. Where a tribal contribution is involved, the tribe shall adopt a tribal resolution stating its commitment to the IHA to make the contribution on behalf of Homebuyers, and a copy of this resolution shall be submitted to HUD with the Development Program.

(b) *Amount of MH Contribution to Project.* The minimum aggregate MH Contribution to a Project shall be $1,500 multiplied by the number of Homes in the Project. If any homesite has been purchased for more than the amount authorized under § 805.404(c)(2) and the excess has not been covered by funds from a source other than Project funds, the minimum aggregate contribution for the Project shall be increased by the amount of the excess.

(c) *Credit for MH Land Contribution—(1) Credit for Contributed Homesite.* The amount to be credited as an MH Contribution for a contributed homesite whether contributed by a Homebuyer or by the tribe, shall not exceed $750 or the appraised value determined in accordance with § 805.219, but shall not in any event be more than an average of $1500 per contributed homesite.

(2) *Sharing of Land Credits.* (i) Where all the sites in the project are contributed sites, whether contributed by the Homebuyers or by the tribe, the MH credits based upon the contributed sites shall be pooled and shared equally by all the Homebuyers in the project; (ii) Where one or more sites are purchased sites and the remaining sites are contributed by the tribe, the MH credits based upon the contributed sites shall be pooled and shared equally by all the Homebuyers in the project; (iii) Where one or more sites are purchased sites and some or all of the remaining sites are contributed by Homebuyers, the IHA, after consulting the Homebuyers may distribute the MH credits based upon contributed sites equally among all Homebuyers or as follows: (A) The credits based upon sites contributed by Homebuyers shall be pooled and shared equally by those Homebuyers, and (B) The credits based upon sites, if any, contributed by the tribe shall be pooled and shared equally by all the other Homebuyers in the project.

(d) Non-land Contributions. If land contribution credits determined in accordance with paragraph (c) aggregate less than the required minimum MH Contribution of $1500 per Homebuyer, the difference shall be provided by non-land contributions. This obligation shall be shared equally by all Homebuyers in the Project, or if the authorization in paragraph (2)(2)(iii) of this section used, by each group who shared in the land credits.

(2) The foregoing establishes the minimum non-land contribution. An IHA may require an additional non-land contribution in its discretion.

(e) *Total Contribution to be Furnished Before Occupancy.* A Homebuyer shall not be entitled to commence occupancy of the home until the total non-land MH Contribution on behalf of the Homebuyer as specified in the MHO Agreement (whether to be furnished by the Homebuyer or the tribe), has been furnished, whether or not the items are necessary for occupancy, e.g., exterior painting. (For exception, see § 805.415(a)(2)(ii).)

§ 805.409 MH Contributions in event of substitution of Homebuyer.

(a) If an MHO Agreement is terminated and a substitute Homebuyer is selected, the amount and kind of MH Contribution to be provided by the substitute Homebuyer shall be determined in accordance with the principles set forth in § 805.406. The aggregate MH credit to the Homebuyers for contributions consisting of work, materials or equipment shall not be more than the amount stated in the Construction Contract unless (1) the contractor agrees to reduce the Price Payable to Contractor by an amount equal to the additional MH credit, but without any increase in the Total Contract Price, or (2) the excess is accounted for under paragraph (b) of this section. The distribution among the Homebuyers of the contribution to be provided shall, to the maximum extent possible, follow the principles of § 805.406 to achieve an equitable distribution among all the Homebuyers. After consulting the Homebuyers and the contractor, the IHA shall notify each Homebuyer and the contractor, in writing, of the modifications to the MH Contribution requirements, and shall advise them that unless a stated time from receipt of the notification, the modified MH requirements will become

effective. In the case of any dispute which cannot be resolved by the IHA, the matter may be referred to HUD for resolution.

(b) Where circumstances so require, the IHA may, provided that the appropriate development account is credited, permit the substitute Homebuyer to complete his MH Contribution within a specified period of time, not later than the first five years of occupancy, in the form of (1) cash in addition to the Required Monthly Payments, (2) clerical, maintenance, professional or technical work for the IHA or (3) another form of contribution satisfactory to the IHA, as set forth in specific provisions to be included in the MHO Agreement.

§ 805.410 MH work contribution.

(a) *Homebuyer's Work Obligation.* (1) Each Homebuyer shall perform the work obligation under the direction of the contractor in accordance with the terms of the MHO Agreement. The work obligation of a Homebuyer may be performed by members of the family. The work may also be performed by an arrangement for others (relatives or friends, for example) to work on the Homebuyer's behalf, but only with the approval of the IHA and the contractor.

(2) The specific jobs to be performed by Homebuyers, and the value of each job, shall be listed in an appendix to the Construction Contract, which shall be available for inspection by the Homebuyers. The listed jobs shall be essential jobs which the contractor would have to pay for in order to complete the Construction Contract if the work were not provided by the Homebuyers. The listed jobs may relate to work on site improvements or community facilities and may include office or clerical work.

(3) The total value of the jobs actually assigned to the Homebuyers shall not exceed the total value of jobs to be performed by MH work, and the total value of the jobs actually assigned to any Homebuyer may not exceed the value of the MH work the Homebuyer is required to provide.

(b) *Valuation of Jobs.* The jobs listed in the appendix to the Construction Contract shall be valued by the IHA and the contractor as follows:

(1) The jobs to be assigned shall be identified. For example, the jobs could include prefabrication of trusses, wall sections, etc., mixing mortar, cutting and/or nailing lumber, installing lath, exterior and/or interior painting, but in every instance shall be related to a defined quantity or a part of the Home, so that the job can be priced on a per unit basis.

(2) For each of these jobs an estimate shall be made of the time (hours or days) which would be needed if the work were done by journeymen workers.

(3) The amount of time so estimated shall then be multiplied by the journeymen Davis-Bacon wage rate for the type of work involved. The amount so computed shall constitute the value of the job involved.

(c) *Assignment and Performance of Jobs and Homebuyer Credit.* (1) The Homebuyer may be assigned to any of the listed jobs, and may be reassigned from one job to another during the course of construction.

(2) The Homebuyer shall provide as many hours of work as necessary to complete the assigned jobs regardless of the number of hours used to compute the value of the jobs under paragraph (b) of this section. The credit given the Homebuyer shall be the value of the assigned jobs regardless of the number of hours actually worked to perform the jobs.

(3) As an alternative to paragraph (c)(2) of this section, the contractor may estimate the number of hours of Homebuyer work required to perform the jobs and may make assignments to the Homebuyers in terms of numbers of hours of work. In that event, the Homebuyer shall be credited for the full MH work contribution when the number of hours of work assigned to him has been completed.

(d) *Record of MH Work.* The contractor shall adopt a system (with the approval of the IHA) for keeping a record of MH work.

(e) *Failure to Provide MH Work.* (1) The IHA shall to the extent feasible monitor the performance of MH work so that problems in the performance of MH work can be anticipated and avoided, or effectively dealt with when they occur. The IHA may terminate the MHO Agreement if the Homebuyer is unable or unwilling to provide, or for any other reason fails to provide, the MH work obligation.

(2) If in the judgment of the contractor a Homebuyer is not meeting his MH work obligations, the contractor may request the assistance of the IHA. Where the deficiency cannot otherwise be remedied, the contractor may request the IHA to terminate the Homebuyer's MHO Agreement and select another Homebuyer to provide the MH work.

(3) If the contractor calls upon the IHA to terminate the MHO Agreement and the contractor furnishes to the IHA sufficient proof of the alleged nonperformance by the Homebuyer, the IHA shall then terminate the MHO Agreement in accordance with the procedures stated in § 805.424(b). In the event of such a termination of an MHO Agreement, the IHA shall, to the extent feasible, select a substitute Homebuyer able to provide a MH work contribution equal to the value of the uncompleted work assignment of the terminated Homebuyer. If the IHA finds it is not feasible to select a substitute who will be able to provide a MH work contribution equal to the value of the uncompleted work assignment of the terminated Homebuyer, the contractor shall achieve acceptable completion of all the contract work without an increase in the Total Contract Price but with an appropriate adjustment to the Price Payable to Contractor.

§ 805.412 Materials or equipment contribution.

If any part of a Homebuyer's MH Contribution is to be provided by furnishing materials or equipment which meet the standards required by the construction contract, such contribution shall be provided and accounted for in accordance with the special provisions of the Construction Contract covering such contribution, which provisions shall include a statement of the kind, quality and value of such contributed materials and equipment.

§ 805.413 Special requirements for MH construction contracts.

(a) *Special Provisions to be Included in Advertisements.* The advertisement for an MH Construction Contract shall state that:

(1) The Project is an MH Project;

(2) The contractor may obtain a copy of the proposed MH Construction Contract and form of MHO Agreement;

(3) The contractor may obtain a listing of the Homebuyers whose sites have received HUD tentative site approval, and a specification of the sources, forms and amounts of the MH Contributions to be utilized by the contractor;

(4) The contractor shall be permitted to review information relating to the ability and capacity of each Homebuyer to provide MH work, and to interview the Homebuyers as arranged by the IHA.

(5) By submitting a bid or proposal, the contractor agrees that, except as he may specify in his bid, the selected Homebuyers have the ability and capacity to provide the required MH work; and

(6) Substitution of a Homebuyer shall be subject to the approval of the contractor, but only with respect to the ability and capacity of the substitute Homebuyer to provide MH work.

(b) *Workmen's Compensation Insurance.* The contractor shall provide

Workmen's Compensation Insurance for Homebuyers and those authorized to provide work on their behalf. If such insurance is not available, the contractor shall obtain private insurance of substantially comparable coverage.

(c) *Responsibility of Contractor.* The Construction Contract shall provide that the contractor shall be responsible for acceptable completion of all the homes, including the tasks assigned to Homebuyers, for MH work credit.

(d) *Total Contract Price and Price Payable to Contractor.* The Total Contract Price shall include the sum of (1) the values of the MH work to be performed, and (2) the value of any materials and equipment to be provided as an MH Contribution. The Price payable to Contractor shall be the Total Contract Price, less the sum of paragraph (d) (1) and (2) of this section. The Total Contract Price shall not exceed the HUD-approved estimate of the cost of constructing the Project without the use of any MH Contributions.

§ 805.414 Disposition of contributions on termination before date of occupancy.

(a) If an MHO Agreement is terminated by the IHA or the Homebuyer before the Date of Occupancy, the Homebuyer shall not receive any reimbursement or return of property on account of any contribution, unless the IHA makes a determination, subject to HUD approval, that the termination is warranted by reason of unforeseen circumstances beyond the Homebuyer's control, or other unforeseen compelling circumstances. If such a determination is made:

(1) The Homebuyer may be reimbursed for any cash, materials or equipment contributed by the Homebuyer.

(2) If the Homebuyer contributed land as a Project site, the site may be returned if (i) construction has not started on the site or construction on the site is minimal, *and* (ii) if the scope of the Construction Contract is affected, an appropriate reduction in the Total Contract Price and Price Payable to Contractor has been agreed to with the contractor. If the site is not returned and is used in the Project, the terminated Homebuyer shall be reimbursed for the amount specified in the MHO Agreement for the land contribution.

(3) The terminated homebuyer shall have no right to any reimbursement or return of property on account of any tribal contribution, or on account of the value of any MH work contribution.

(b) The amount of any credit for non-land contributions by a terminated Homebuyer, other than a contribution for which reimbursement or return of property was made in accordance with paragraph (a) of this section, shall be credited in equal shares to the Unrefundable MH Reserves of all the Homebuyers in the Project, including a substitute Homebuyer (see § 805.421(a)).

(c) The amount of any credit on account of any tribal non-land contribution on behalf of any terminated Homebuyer shall be credited to the Unrefundable MH Reserve maintained for the substituted Homebuyer. (See § 805.421(a).)

(d) The amount of any credit on account of any land contribution for which reimbursement or return of property in accordance with paragraph (a) of this section is not made, and of any credit on account of the terminated Homebuyer's share of the credits for homesites contributed by the tribe, shall be pooled and shared equally by all the Homebuyers in accordance with § 805.408(c)(1).

§ 805.415 Actions upon completion; commencement of occupancy.

(a) *Notice.* (1) Upon acceptance by the IHA from the contractor of the home as ready for occupancy, the IHA shall determine whether the Homebuyer's full MH Contribution has been provided and, in the event of an affirmative determination, the Homebuyer shall be notified in writing that his home is available for occupancy as of a date specified in the notice ("Date of Occupancy").

(2) If the IHA determines that the Homebuyer has not fully provided his MH Contribution, the Homebuyer shall be so notified in writing and:

(i) The notice shall specify the time by which the Homebuyer's full MH Contribution shall be provided and shall state that the Homebuyer may not commence occupancy until the Homebuyer's full MH Contribution has been provided, or

(ii) If there is special justification for permitting occupancy prior to completion of the Homebuyer's MH Contribution (such as prevention of vandalism or unacceptable hardship to the family) and there is reasonable assurance that the Homebuyer will complete the MH Contribution within an acceptable time, the notice may contain a Date of Occupancy. In such case the notice shall state that the home may be occupied on such date: Provided, That a written agreement has been entered into by the Homebuyer, the IHA and the contractor (if MH work is involved) specifying the schedule and other details for completion of the MH Contribution.

(b) *Lease Term Under MHO Agreement.* The term of the Homebuyer's lease under the MHO Agreement shall be as provided in the MHO Agreement.

(c) *Credits to MH Reserves.* Promptly after the Date of Occupancy the IHA shall credit the amount of the MH Contributions to the appropriate Reserves in accordance with § 805.421(a) and shall provide the Homebuyer and the tribal government with a statement, approved by HUD, of the amounts so credited.

§ 805.416 Required monthly payments.

(a) *Establishment of Schedule.* (1)(i) Each Homebuyer shall be required to make a monthly payment ("Required Monthly Payment") of no less than the Administration Charge.

(ii) Subject to the requirement for payment of at least the Administration Charge, each Homebuyer shall pay an amount of Required Monthly Payment computed by (i) multiplying Family Income by a specified percentage, and (ii) subtracting from that amount the Utility Deduction (as specified in the approved schedule). The specified percentage shall be no less than 15 percent and no more than 25 percent, as determined by the IHA.

(2) The IHA's schedule may provide that the Required Monthly Payment shall not be more than a maximum amount as determined under the regulations, provided that this maximum shall not be less than the sum of:

(i) The Administration Charge, and

(ii) The monthly debt service amount shown on the Homebuyer's Purchase Price Schedule.

(b) *Amount of Required Monthly Payment.* The Homebuyer shall pay to the IHA during the lease term a monthly payment ("Required Monthly Payment") determined in accordance with the IHA's HUD-approved schedule and regulations. If the Required Monthly Payment exceeds the Administration Charge, the amount of the excess shall be credited to the Homebuyer's Monthly Equity Payments Account (see § 805.421(b)(1)).

(c) *Definitions Used in Determining Required Monthly Payment.* For the purpose of determining the amount of the Required Monthly Payment:

(1) The definitions of "Family Income" and "Total Family Income" as stated in 24 CFR 860.403(f) and 860.403(o), shall be applicable;

(2) "Utility Deduction" shall mean the amount estimated by the IHA, and approved by HUD, for the monthly cost of the Homebuyer for the reasonable use of utilities which he is obligated to provide under the MHO Agreement; and

(3) "Utilities" shall mean water, electricity, gas, other heating.

refrigeration and cooking fuels and sewerage services. (Telephone service is not included as a utility.)

(d) *Adjustments in the Amount of the Required Monthly Payment.* After the initial determination of a Homebuyer's Required Monthly Payment, the IHA shall increase or decrease the amount of such payment in accordance with the HUD-approved schedule of regulations to reflect changes in Family Income (pursuant to a reexamination by the IHA), adjustments in the Administration Charge, or in any of the other factors affecting computation of the Homebuyer's Required Monthly Payment.

(2) In order to accommodate wide fluctuations in the burden of making Required Monthly Payments due to seasonal conditions, an IHA may agree with any Homebuyer for payments to be made in accordance with a seasonally adjusted schedule which assures full payment of the required amount for each year.

§ 805.417 Inspections; responsibility for items covered by warranty.

(a) *Inspection Before Move-In and Identification of Warranties.* (1) In order that there shall be a record of the condition of the home as of the Date of Occupancy, an inspection of the home by the IHA and the Homebuyer shall be made as close as possible to, but not later than, the Date of Occupancy. This inspection shall be independent of the inspection required by § 805.221(c), but may, if feasible, be combined with such inspection. After the inspection, the IHA inspector shall give the Homebuyer a written statement, signed by the inspector, of the condition of the home and equipment. If the Homebuyer concurs with the statement, he shall sign a copy of the statement. If the Homebuyer does not concur, he shall state his objections on the statement, and the differences shall be resolved by the IHA.

(2) On or before commencement of occupancy of each home, the IHA shall furnish the Homebuyer with a list of applicable contractor's, manufacturers' and suppliers' warranties, indicating the items covered and the periods of the warranties.

(b) *Inspections During Contractor's Warranty Periods; Responsibility for Items Covered by Contractor's, Manufacturer's or Supplier's Warranties.* The IHA shall inspect the home in accordance with the provisions of § 805.222(b) during the contractor's warranty period or periods. Independent of such IHA inspections, and the inspections required under paragraph (a) of this section, it shall be the responsibility of the Homebuyer during the period covered by §§ 805.222(b) and 805.417(a) and subsequently for the duration of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty periods (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a Homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress under the warranty, correction of the deficiency shall be the responsibility of the Homebuyer.

(c) *Inspection Upon Termination of Agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the home, after notifying the Homebuyer of the time for the inspection and shall give the Homebuyer a written statement of the cost of any maintenance work required to put the home in satisfactory condition for the next occupant (see § 805.424(d)(1)(i)).

(d) *Homebuyer Participation in Inspections.* The Homebuyer shall be notified that he or his representative may join in the inspection made pursuant to this section.

(e) *Permission for Inspections.* The Homebuyer shall permit the IHA to inspect the home at reasonable hours and intervals during the lease term in accordance with rules established by the IHA.

§ 805.418 Maintenance, utilities, and use of home.

(a) *Maintenance*—(1) *Homebuyer's Responsibility for Maintenance.* The Homebuyer shall be responsible for maintenance of the home, including all repairs and replacements (including repairs and replacements necessitated by damage from any cause). The IHA shall not be obligated to pay for or to provide any maintenance of the home other than the correction of warranty items reported during the applicable warranty period.

(2) *Homebuyer's Failure to Perform Maintenance.* (i) Failure of the Homebuyer to perform his maintenance obligations constitutes a breach of the MHO Agreement. Upon a determination by the IHA that a breach has occurred, the IHA shall require the Homebuyer to agree to a specific plan of action to cure the breach and to assure future compliance. The plan shall provide for maintenance work to be done within a reasonable time by the Homebuyer, with such use of the Homebuyer's MEPA as may be necessary, or to be done by the IHA and charged to the Homebuyer's MEPA. If the Homebuyer fails to carry out the agreed to plan, the MHO Agreement shall be terminated in accordance with §§ 805.424(a) and 805.424(b).

(ii) If the IHA determines that the condition of the property creates a hazard to the life, health or safety of the occupants, or if there is an immediate risk of serious damage to the property if the condition is not corrected, the corrective work shall be done promptly by the Homebuyer with such use of the Homebuyer's MEPA as the IHA may determine to be necessary, or by the IHA with a charge of the cost to the Homebuyer's MEPA in accordance with § 805.421(c).

(iii) Any maintenance work performed by the IHA shall be accounted for through a work order stating the nature of and charge for the work. The Homebuyer shall receive a copy of all work orders for his home.

(b) *Homebuyer's Responsibility for Utilities.* The Homebuyer shall furnish his own utilities. The IHA shall have no obligation to do so. However, if the IHA determines that the Homebuyer is unable to provide his utilities, and that this inability creates conditions which are hazardous to life, health or safety of the occupants, or threaten immediate serious damage to the property, the IHA may provide the utilities and charge the Homebuyer's MEPA for doing so (subject, however, to the limitation provided at § 805.421(c)(4)).

(c) *Obligations with Respect to Home and Other Persons and Property.* The Homebuyer shall agree:

(1) To use the home only as a place to live for (i) himself and the members of his family listed in a schedule appended to the Homebuyer's MHO Agreement, (ii) children born to or adopted by members of such family after the date of the MHO Agreement, and foster children, (iii) persons providing live-in care for a member of the Homebuyer family, and (iv) aged or widowed forebears of the Homebuyer or spouse; other family members may live in the home only with the prior written approval of the IHA.

(2) Not to sublet his home without the prior written approval of the IHA;

(3) To abide by necessary and reasonable regulations promulgated by the IHA for the benefit and well-being of the Project and the Homebuyers, which shall be prominently posted the IHA office;

(4) To comply with all obligations imposed upon Homebuyers by applicable provisions of building and housing codes materially affecting health and safety;

(5) To keep the home and such other areas as may be assigned to him for his

exclusive use in a clean and safe condition;

(6) To dispose of all ashes, garbage, rubbish, and other waste from the home in a sanitary and safe manner;

(7) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances;

(8) To refrain from, and to cause his household and guests to refrain from, destroying, defacing, damaging, or removing any part of the home or Project;

(9) To conduct himself and cause other persons who are on the premises with his consent to conduct themselves in a manner which will not disturb the neighbors' peaceful enjoyment of their accommodations and will be conducive to maintaining the Project in a decent, safe and sanitary condition; and

(10) To refrain from illegal or other activity which impairs the physical or social environment of the Project.

(d) *Structural Changes.* A Homebuyer shall not on his own initiative make any structural changes in or additions to his home unless the IHA has first determined in writing that such change would not (1) impair the value of the home, the surrounding homes, or the Project as a whole; or (2) affect the use of the home for residential purposes; or (3) violate HUD requirements as to construction and design. Any changes made in accordance with this section shall be at the Homebuyer's expense (and not from any Reserve or Account created under the MHO Agreement), and in the event of termination of the MHO Agreement the Homebuyer shall not be entitled to any compensation for such changes or additions.

§ 805.419 Administration charge and operating expense.

(a) *Administration Charge.* The term "Administration Charge" means the amount budgeted per unit month for operating expense exclusive of the costs of HUD approved expenditures for which operating subsidy is being provided in accordance with § 805.311(b).

(b) *Components of Operating Expense.* The term "operating expense" means the amount budgeted for the following operating expense categories, and any other operating expense categories included in the IHA's HUD-approved operating budget for a fiscal year or other budget period:

(1) *Administration.* Administrative salaries; travel; legal expenses; postage; telephone and telegraph; office supplies, space, maintenance, and utilities; accounting services; and Independent Public Accountant audits approved by HUD (the costs of which shall be reimbursed by HUD).

(2) *General Expense.* The cost of premiums for fire and other insurance; payments in lieu of taxes, if any; payroll taxes; etc.

(c) *Contribution to Operating Reserve.* An amount which, in addition to the amount for insurance premiums (see § 805.419(b)(2)), is estimated to be sufficient to provide for the accumulation of an Operating Reserve as provided in § 805.420.

§ 805.420 Operating reserve.

(a) The IHA shall maintain an Operating Reserve for the Project in an amount sufficient for working capital purposes, for estimated future non-routine requirements for IHA-owned administrative facilities and common property, for the payment of advance premiums (usually three years) for insurance, and for unanticipated project requirements approved by HUD. The contribution for this reserve pursuant to § 805.419(b)(2) and (c) shall be determined by the IHA with the approval of HUD. The minimum amount of such contribution during the period of the first operating budget shall be an amount equal to the per unit month cost for insurance premiums to be reserved for the next advance premium (usually three years), plus an estimate of the need for working capital for other purposes. The amount of this contribution for subsequent fiscal years shall be increased or decreased annually to reflect the needs of the IHA for working capital and for reserves for anticipated future expenditures and shall be included in the Operating Budget submitted to HUD for approval.

(b) At the end of each fiscal year or other budget period the Project Operating Reserve shall be (1) credited with the amount by which operating receipts exceed operating expenses of the Project for the budget period, or (2) charged with the amount by which operating expenses exceed operating receipts of the Project for the budget period, to the extent of the balance in the Operating Reserve.

§ 805.421 Homebuyer reserves and accounts.

(a) *Refundable and Unrefundable MH Reserves ("Reserves").* (1) The IHA shall establish as of the Date of Occupancy separate Refundable and Unrefundable MH Reserves for each Homebuyer.

(2) The Refundable MH Reserve shall be credited with the amount of the Homebuyer's non-land MH Contribution.

(3) The Unrefundable MH Reserve shall be credited (i) with the amount of the Homebuyer's share of any credits for land contributed to the Project, as determined in accordance with § 805.408(c)(2), (ii) the Homebuyer's share of any tribal non-land contribution to the Project, and (iii) the Homebuyer's share pursuant to § 805.414(b) of any credit for non-land contributions by a terminated Homebuyer.

(4) When it becomes necessary to draw against either the Refundable MH Reserve or the Unrefundable MH Reserve of a certain Homebuyer the IHA shall requisition the funds from HUD as an advance against the Project Loan pursuant to the ACC. The amount of these borrowings, along with other Development Costs, are repaid by HUD annual contributions payments made pursuant to the ACC but because the amount represents a draw against the Homebuyer's MH reserve, the amount of the MH reserve is reduced accordingly.

(b) *Equity Accounts ("Accounts").*—(1) *Monthly Equity Payments Account ("MEPA").* The IHA shall maintain a separate MEPA for each Homebuyer. The IHA shall, as provided in § 805.416(a), credit this account with the amount by which each Required Monthly Payment exceeds the Administration Charge.

(2) *Voluntary Equity Payments Account.* The IHA shall maintain a separate Voluntary Equity Payments Account for each Homebuyer. The IHA shall credit this account with the amounts of any periodic or occasional voluntary payments (over and above the Required Monthly Payments) the Homebuyer may desire to make to acquire ownership of the home within a shorter period of time.

(3) *Investment of Equity Funds.* Funds held by the IHA in the MEPAs and Voluntary Equity Payments Accounts of all the Homebuyers in the Project shall be invested in federally insured savings accounts, in federally insured credit unions, or in securities approved by HUD. Income earned on the investment of such funds shall periodically, but at least annually, be prorated and credited to each Homebuyer's MEPA and Voluntary Equity Payments Account, in proportion to the amount in each such account on the date of proration.

(c) *Charges for Maintenance.* (1) If the IHA has maintenance work done in accordance with § 805.418(a)(2), the cost thereof shall be charged to the Homebuyer's MEPA.

(2) At the end of each fiscal year, the debit balance, if any, in the MEPA shall be charged, first, to the Voluntary Equity Payments Account, second, to the Refundable MH Reserve and, Third, to

the Unrefundable MH Reserve, to the extent of the credit balances in such Account and Reserves.

(3) In lieu of charging the debit balance in the MEPA to the Homebuyer's Refundable MH Reserve and/or Unrefundable MH Reserve (but not in lieu of charging his Voluntary Equity Payments Account), the IHA may allow the debit balance to remain in the MEPA pending replenishment from subsequent credits to the Homebuyer's MEPA.

(4) The IHA shall at no time permit the accumulation of a debit balance in the MEPA in excess of the sum of the credit balances in the Homebuyer's Refundable and Unrefundable MH Reserves unless the expenditure is required to alleviate a hazard to the life, health or safety of the occupants, or to alleviate an immediate risk of serious damage to the property, and the source of funds for reimbursement to the IHA is specifically approved by HUD.

(d) *Disposition of Reserves and Accounts Upon Acquisition of Ownership.* When the Homebuyer purchases his home, the balances in the Homebuyer's Reserves and Accounts shall be disposed of in accordance with § 805.422(d)(3).

(e) *Disposition of Reserves and Accounts Upon Termination of the Agreement.* If the MHO Agreement is terminated by the Homebuyer or the IHA, the balances in the Homebuyer's Reserves and Accounts shall be disposed of in accordance with § 805.424(d).

(f) *Use of Reserves and Accounts; Nonassignability.* The Homebuyer shall have no right to receive or use the funds in any Reserve or Account except as provided in the MHO Agreement, and the Homebuyer shall not, without approval of the IHA and HUD, assign, mortgage or pledge any rights in the MHO Agreement or to any Reserve or Account.

§ 805.422 Purchase of home.

(a) *When Home May be Purchased.* A Homebuyer may at his option purchase his home on or after the Date of Occupancy, but only if the Homebuyer has met all of his obligations under the MHO Agreement.

(b) *Purchase Price and Purchase Price Schedule.* (1) *Determination of Initial Purchase Price.* The IHA shall determine the Initial Purchase Price of a home for the Homebuyer who first occupies the home pursuant to an MHO Agreement as follows (unless the IHA, after consultation with the Homebuyers, has developed an alternative method of apportioning among the Homebuyers the amount determined in Step 1, and the alternative method has been made a part of the HUD-approved Development Program):

Step 1: From the estimated Total Development Cost (including the MH Contributions and the full amount for contingencies as authorized by HUD) of the Project as shown in the Development Cost Budget in effect at the time of execution of the Construction Contract, deduct the amounts, if any, attributable to (i) relocation costs, (ii) counseling costs, and (iii) the cost of any community, administration or management facilities, including the land, equipment and furnishings attributable to such facilities as set forth in the Development Program for the Project.

Step 2: Deduct the total amount attributable to land for the Project (including MH Contribution credits for land, but not including land attributable to community, administration or management facilities) from the amount determined in Step 1.

Step 3: Multiply the amount determined in Step 2 by a fraction of which the numerator is the prototype cost for the size and type of home being constructed for the Homebuyer and the denominator is the sum of the unit prototype costs for the homes of various sizes and types comprising the Project.

Step 4: Determine the amount chargeable to Development Cost for acquisition of the homesite (the assigned value of the homesite in accordance with § 805.408(c)(1) or the actual cost of the homesite, and not the Homebuyer's share of the aggregate credit for all the contributed homesites.)

Step 5: Add the amount determined in Step 4 to the amount determined in Step 3. The sum determined under this step shall be the Initial Purchase Price of the home.

(2) *Purchase Price Schedule.* As promptly as possible after execution of the Construction Contract, the IHA shall furnish to the Homebuyer a statement of the Initial Purchase Price of the home and a Purchase Price Schedule. The Purchase Price Schedule shall (i) show the monthly amortization of the Initial Purchase Price over a 25-year period, (ii) state the monthly debt service amount upon which the schedule is based, and (iii) state that such amortization shall commence with the first day of the month following the Date of Occupancy. The schedule shall be computed on the basis of a rate of interest equal to the Minimum Loan Interest Rate for the Project as stated in the ACC.

(c) *Initial Purchase Price and Purchase Price Schedule for Subsequent Homebuyer.*—(1) *Subsequent Homebuyer.* "Subsequent Homebuyer" means a Homebuyer other than the Homebuyer who first occupies a home pursuant to an MHO Agreement.

(2) *Determination of Initial Purchase Price.* The Initial Purchase Price for a Subsequent Homebuyer shall be the lower of the current appraised value or the current replacement cost of the home, both as determined or approved by HUD.

(3) *Purchase Price Schedule.* Each Subsequent Homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 25 year period commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement of the Subsequent Homebuyer and (2) the level monthly debt service amount necessary to complete amortization of the initial purchase price over such period at the interest rate used to compute the Purchase Price Schedule for the first Homebuyer. (This provision does not mean that the ACC is thereby extended beyond its original term.)

(d) *Conveyance of Home.*—(1) *Amounts to Be Paid.* The purchase price shall be the amount shown on the Purchase Price Schedule for the month in which the settlement date falls.

(2) *Settlement Costs.* Settlement Costs are the costs incidental to acquiring ownership, including, e.g., the cost and fees for credit report, field survey, title examination, title insurance, inspections, attorneys other than the IHA's attorney, closing, recording, transfer taxes, financing fees and mortgage loan discount. Settlement Costs shall be paid by the Homebuyer, who may use any Reserves or Accounts available for this purpose in accordance with paragraph (d)(3) of this section.

(3) *Disposition of Homebuyer Reserves and Accounts.* When the Homebuyer purchases the home the net credit balances in the Homebuyer's Reserves and Accounts under § 805.421 shall be applied in the following order:

(i) If the IHA finances purchase of the home in accordance with § 805.423, the MEPA and the Voluntary Equity Payments Account shall be charged, to the extent of the net credit balance of these Accounts, first, for the initial payment for fire and extended coverage insurance on the home after conveyance and, second, for establishment of a Homeowner's maintenance reserve. Any further amounts necessary for these purposes shall then be charged against the MH Reserves;

(ii) For application to Settlement Costs if the Homebuyer so directs;

(iii) To payment of the purchase price; and

(iv) For refund to the Homebuyer.

(4) *Settlement.* A home shall not be conveyed until the Homebuyer has met all his obligations under the MHO Agreement. The settlement date shall be mutually agreed upon by the parties. On the settlement date the Homebuyer shall receive the documents necessary to

convey to the Homebuyer the IHA's right, title and interest in the home, subject to any applicable restrictions of covenants as expressed in such documents. The required documents shall be approved by the attorneys representing the IHA and HUD, and by the Homebuyer or his attorney.

(5) *IHA Investment of Purchase Price Payments and Remittance to HUD.* After conveyance, all funds held or received by the IHA which are applied to payment of the purchase price of a home by a Homebuyer or Homeowner shall be held separate from other Project funds, shall not be used for development or operating expenses of any Project, and shall be invested in accordance with HUD requirements. Such funds include the amount applied to payment of the purchase price from the MEPA and the Voluntary Equity Payments Account; any cash paid in by the Homebuyer for application to the purchase price; and, if the IHA finances purchase of the home in accordance with § 805.423, any portion of the mortgage payments by the Homeowner attributable to payment of the debt service (principal and interest) on the mortgage. At such intervals as HUD may direct, the IHA shall remit to HUD all such funds, and all income earned on the investment of such funds.

(e) *Notice of Eligibility for Financing.* (1) The IHA shall at the time of each examination or reexamination of the family's earnings and other income determine among other things whether the Homebuyer is eligible for IHA Homeownership Financing under § 805.423. If the IHA determines that the Homebuyer is eligible, it shall send the Homebuyer written notification which shall state (i) that it will make available IHA Homeownership Financing to enable the Homebuyer to purchase the home, if the Homebuyer wishes to do so; and (ii) that if the Homebuyer chooses not to purchase the home at that time, his or her status will be as provided in § 804.422(e)(2), the text of which, appropriately modified, shall be set forth in the letter of notification.

(2) After the IHA has given notice in accordance with paragraph (e)(1) of this section that the Homebuyer is eligible for IHA Homeownership Financing, and until the Homebuyer purchases his home, he shall have all the rights of a Homebuyer (including the right to continue accumulating credits in the MEPA and Voluntary Equity Payments Account) and shall be subject to all the obligations under the MHO Agreement (including the obligation to make monthly payments based on income). However, during this period there shall be no reduction in the purchase price pursuant to the Purchase Price Schedule, and the purchase price at the time the Homebuyer purchases his home shall be the amount shown on the Purchase Price Schedule for the month the IHA gave the notice in accordance with paragraph (e)(1) of this section.

§ 805.423 IHA homeownership financing.

(a) *Eligibility.* The Homebuyer shall be eligible for IHA Homeownership Financing when the IHA determines that:

(1) He can pay: (i) The amount necessary for Settlement Costs, (ii) the initial payment for fire and extended coverage insurance carried on the home after conveyance, and (iii) $1,500 for the Homeowner's maintenance reserve (these amounts may be paid by application of balances in the Homebuyer's Reserves or Accounts, or from other Homebuyer sources); and

(2) The Homebuyer's income has reached the level, and is likely to continue at such level, at which 25 percent of monthly Family Income is at least equal to the sum of the monthly debt service amount shown on the Homebuyer's Pruchase Price Schedule and the IHA's estimates, approved by HUD, of the following monthly payments and allowances:

(i) Payment for fire and extended coverage insurance;

(ii) Payment for taxes and special assessments, if any;

(iii) The IHA mortgage servicing charge;

(iv) Amount necessary for maintenance of the home; and

(v) Amount necessary for utilities for the home.

(b) *Promissory Note, Mortgage, and Mortgage Amortization Schedule.* (1) When IHA Homeownership Financing is utilized, the Homebuyer shall execute and deliver a Promissory Note and Mortgage. The Mortgage shall be a first lien on the property, shall be in form approved by HUD, shall be recorded by the IHA, and shall secure performance of all the terms and conditions of the Promissory Note. The principal amount of the Promissory Note shall be equal to the unpaid balance of the purchase price of the home as determined in accordance with § 805.422. The Promissory Note and/or Mortgage shall contain provisions required by HUD which, among other things, will provide for adjustment of monthly mortgage payments in the event of a reduction in income, and for a maintenance reserve of $1,500 to be used if the Homeowner has no other funds reasonably available to pay for expenses such as maintenance, insurance, and taxes.

(2) The IHA shall furnish the Homebuyer a Mortgage Amortization Schedule based on the amount of the Promissory Note. This schedule shall provide for monthly reductions in and complete amortization of the principal amount of the Promissory Note, and shall show the level monthly debt service amount needed to complete the amortization. The amortization period shall commence on the first day of the month following the date of settlement and shall end on the first day after the end of the period covered by the Homebuyer's Purchase Price Schedule. The rate of interest shall be the FHA maximum interest rate for home mortgages in effect at the time of settlement.

(c) *Insurance.* Fire and extended coverage insurance in an amount and on terms acceptable to HUD shall be obtained by the IHA prior to settlement and shall be maintained until termination of the obligation under the Mortgage. The Homeowner shall make payments to the IHA to cover the cost of the insurance.

(d) *Disposition of Servicing Fees and Mortgage Debt Service Payments.* The amount of the mortgage servicing fees collected from the Homeowner under Promissory Note may be retained by the IHA, and utilized as Project operating receipts. The total amount of the mortgage payments collected which are attributable to payment of debt service (principal and interest) on the mortgage shall be remitted to HUD in accordance with § 805.422(d)(5).

(e) *Occupancy, Care and Use of Home.* The IHA shall promulgate rules and regulations which are consistent with the provisions of § 805.418(c) concerning occupancy, care and use of their homes by Homeowners.

§ 805.424 Termination of MHO agreement.

(a) *Termination upon breach.* In the event the Homebuyer fails to comply with any of his obligations under the MHO Agreement, the IHA may terminate the MHO Agreement. Misrepresentation or withholding of material information in applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the Homebuyer's obligations under the MHO Agreement. "Termination" as used in the MHO Agreement does not include acquisition of ownership by the Homebuyer.

(b) *Notice of Termination of MHO Agreement by the IHA; Right of Homebuyer to Respond.* Termination of the MHO Agreement by the IHA for any reason shall be by written Notice of Termination. Such notice shall state (1)

the reason for termination; (2) that the Homebuyer may respond to the IHA in writing or in person of time regarding the reason for termination; (3) that in such response he may be represented or accompanied by a person of his choice, including a representative of the tribal government; (4) that the IHA will advise the tribal government concerning the termination; (5) that if, within 30 days after the date of receipt of the Notice of Termination, the Homebuyer presents to the IHA evidence or assurances satisfactory to the IHA that he will cure the breach and continue to carry out his MHO obligations, the IHA may rescind or extend the Notice of Termination; and (6) that unless there is such recision or extension, the lease term and MHO Agreement shall terminate on the 30th day after the date of receipt of the Notice of Termination. The IHA may, with HUD approval, modify the provisions of the Notice of Termination relating to the procedures for presentation and consideration of the Homebuyer's response. In all cases the IHA's procedures for the termination of an MHO Agreement shall afford a fair and reasonable opportunity to have the Homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act and shall incorporate all the steps and provisions needed to achieve compliance with state, local or tribal law with the least possible delay.

(c) *Termination of MHO Agreement by Homebuyer.* The Homebuyer may terminate the MHO Agreement by giving the IHA written notice, and the lease term and MHO Agreement shall terminate on the 30th day after the date of receipt of such notice. If the Homebuyer vacates the home without notice to the IHA the Homebuyer shall remain subject to the obligations of the MHO Agreement including the obligation to make monthly payments until the IHA terminates the MHO Agreement in writing. Notice of the termination shall be communicated by the IHA to the Homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of Funds Upon Termination of the MHO Agreement.* If the MHO Agreement is terminated by the Homebuyer or the IHA the balances in the Homebuyer's Reserves and Accounts shall be disposed of as follows:

(1) The MEPA shall be charged with:

(i) Any maintenance and replacement cost incurred by the IHA to put the home in satisfactory condition for the next occupant;

(ii) Any amounts the Homebuyer owes the IHA including Required Monthly Payments; and

(iii) The Required Monthly Payment for the period the home is vacant not to exceed 30 days from the date of receipt of the Notice of Termination, or if the Homebuyer vacates the home without notice to the IHA, for the period ending with the effective date of termination by the IHA.

(2) If after making the charges in accordance with paragraph (d)(1) of this section there is a debit balance in the MEPA, the IHA shall charge that debit balance, first, to the Voluntary Equity Payments Account, second, to the Refundable MH Reserve and, third, to the Unrefundable MH Reserve, to the extent of the credit balances in such Reserves and Account. If the debit balance in the MEPA exceeds the sum of the credit balances in the Voluntary Equity Payments Account and the Refundable and Unrefundable MH reserves the Homebuyer shall be required to pay to the IHA the amount of such excess.

(3) If, after making the charges in accordance with paragraph (d)(1) of this section there is a credit balance in the MEPA, this amount shall be refunded to the Homebuyer.

(4) Any credit balance remaining in the Voluntary Equity Payments Account after making the charges described in paragraph (d)(2) of this section shall be refunded to the Homebuyer.

(5) Any credit balance remaining in the Refundable MH Reserve after making the charges described in paragraph (d)(2) of this section is not refundable to the Homebuyer and shall be retained by the IHA on behalf of a Subsequent Homebuyer.

(e) *Settlement upon Termination*—(1) *Time for settlement.* Settlement with the Homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the Homebuyer a statement of such charges. The Homebuyer may obtain settlement before the actual cost of any maintenance required to put the home in satisfactory condition for the next occupant has been determined if the Homebuyer is willing to accept the IHA's estimate of the amount of such cost. In such cases, the amounts to be charged for such maintenance shall be based on the IHA's estimate of the cost thereof.

(2) *Disposition of personal property.* Upon termination, the IHA may dispose of in any lawful manner deemed suitable by the IHA any item of personal property abandoned by the Homebuyer in the home. Proceeds, if any, after such disposition, may be applied to the payment of amounts owed by the Homebuyer to the IHA.

(f) *Responsibility of IHA to Terminate.* (1) The IHA is responsible for taking appropriate action with respect to any non-compliance with the MHO Agreement by the Homebuyer. In cases of non-compliance which are not corrected as provided further in this paragraph, it is the responsibility of the IHA to terminate the MHO agreement in accordance with the provisions of this section and to institute eviction proceedings against the occupant.

(2) As promptly as possible, after a non-compliance comes to the attention of the IHA, the IHA shall discuss the matter with the Homebuyer and give him an opportunity to state any extenuating circumstances or complaints which he may have. A specific plan of action shall be agreed upon which will indicate specifically how the Homebuyer will come into compliance as well as any actions by the IHA which may be appropriate. This plan shall be put in writing and shall be signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the Homebuyer to agree to such a plan or failure by the Homebuyer to comply with the plan, the IHA shall issue a Notice of Termination of the MHO Agreement and evict the Homebuyer in accordance with the provisions of this section.

(4) A record of meetings with Homebuyers, written plans of action agreed upon, and all other related steps taken pursuant to this paragraph (f) shall be maintained by the IHA for inspection by HUD.

§ 805.425 Succession upon death, mental incapacity or abandonment.

(a) *Definition of "Event."* "Event" means the death of, or mental incapacity of or abandonment of the home by, all of the persons who have executed the MHO Agreement as Homebuyers.

(b) *Designation of Successor by Homebuyer.* A Homebuyer may designate as a successor only a person who, at the time of the designation, is a member of the Homebuyer family and is an authorized occupant of the home in accordance with the MHO Agreement, or if the designation is made before completion of the home, is a member of the Homebuyer's family and is scheduled to be an occupant when the home is completed. The designation shall be made at the time of execution of the MHO Agreement and the Homebuyer may, at any subsequent

time, change the designation by written notice to the IHA, and designate another successor who meets the qualifications of this paragraph. The designated successor shall be entitled to succeed only if, at the time of the Event, he meets the conditions stated in paragraph (c) of this section.

(c) *Succession by Persons Designated by Homebuyer.* Upon occurrence of an Event, the person designated as the successor shall succeed to the former Homebuyer's rights and responsibilities under the MHO Agreement if the designated successor meets the following conditions:

(1) At the time of the Event, (i) the successor is a member of the Homebuyer's family who is entitled to live in the home pursuant to the IHA's written approval, and (ii) in the case of an Event occurring after commencement of occupancy by the Homebuyer, the successor is living in the home;

(2) The successor is willing and able to pay the Administration Charge and to perform the obligations of a Homebuyer under an MHO Agreement; and

(3) The successor executes an assumption of the former Homebuyer's obligations under the MHO Agreement.

(d) *Designation of Successor by IHA.* If at the time of the Event there is no successor designated by the Homebuyer, or if any of the conditions in paragraph (c) of this section are not met by the designated successor, the IHA may designate as successor any family member who meets all of the conditions of paragraph (c) of this section.

(e) *Occupancy by Appointed Guardian.* If at the time of the Event there is no qualified successor designated by the Homebuyer or by the IHA in accordance with the foregoing paragraphs of this section, and a minor child or children of the Homebuyer are living in the home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the home, approve as occupant of the home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO Agreement in their interest and behalf.

(f) *Succession and Occupancy on Restricted Indian Land.* In the case of a home on Indian land subject to restrictions on alienation under federal or state law (including federal trust or restricted land as defined in § 805.218(a)(2) and land subject to trust or restriction under state law), a person who is prohibited by law from succeeding to the IHA's interest in such land may, nevertheless, continue in occupancy with all the rights, obligations and benefits of the MHO Agreement, modified to conform to these restrictions on succession to the land.

(g) *Termination in Absence of Qualified Successor or Occupant.* If there is no qualified successor in accordance with any of the foregoing paragraphs of this section, the IHA shall terminate the MHO Agreement.

§ 805.426 Miscellaneous.

(a) *Annual Statement to Homebuyer.* The IHA shall provide an annual statement to the Homebuyer which will set forth, at the end of the IHA fiscal year, the amount in each of the following: (1) The Voluntary Equity Payments Account, (2) the MEPA, (3) the Refundable MH Reserve, and (4) the Unrefundable MH Reserve. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance Prior to Transfer of Ownership; Repair or Rebuilding*—(1) *Insurance.* The IHA shall carry all insurance prescribed by HUD including fire and extended coverage insurance upon the home.

(2) *Repair or Rebuilding.* In the event the home is damaged or destroyed by fire or other casualty the IHA shall consult with the Homebuyer as to whether the home shall be repaired or rebuilt. The IHA shall use the insurance proceeds to have the home repaired or rebuilt unless there is good reason for not doing so. In the event the IHA determines that there is good reason that the home should not be repaired or rebuilt, and the Homebuyer disagrees, the matter shall be submitted to HUD for final determination. If the final determination is that the home should not be repaired or rebuilt, the IHA shall terminate the MHO Agreement, and the Homebuyer's obligation to make Required Monthly Payments shall be deemed to have terminated as of the date of the damage or destruction. The Homebuyer shall in no event be entitled to any portion of the insurance proceeds upon such damage or destruction.

(3) *Suspension of Payments.* In the event of termination of an MHO Agreement because of damage or destruction of the home, or if the home must be vacated during the repair period, the IHA will use its best efforts to assist in relocating the Homebuyer. If the home must be vacated during the repair period, Required Monthly Payments shall be suspended during the vacancy period.

(c) *Notices.* Any notice by the IHA to the Homebuyer required under the MHO Agreement or by law shall be delivered in writing to the Homebuyer personally or to any adult member of his family residing in the home, or shall be sent by certified mail, return receipt requested, properly addressed, postage prepaid. Notice to the IHA shall be in writing, and either delivered to an IHA employee at the office of the IHA or sent to the IHA by certified mail, return receipt requested, properly addressed, postage prepaid.

§ 805.427 Annual contributions contract.

(a) The ACC for MH Projects placed under ACC on or after the effective date of this part and for MH Projects converted in accordance with § 805.428 shall be in the form prescribed by HUD for such Projects. Projects under this form of ACC shall not be consolidated with Projects under other forms of ACC.

(b) The Minimum Loan Interest Rate shall be a rate specified by HUD in accordance with the Act.

§ 805.428 Conversion of existing projects.

(a) *Applicability.* This § 805.428 shall govern the conversion of an Existing Project to development and operation, or to operation only, under this Subpart. Any such conversion shall become effective upon the date agreed to by the IHA and HUD.

(b) *Obtaining Consent of Homebuyers to Conversion.* (1) Each Existing Project shall be converted as soon as the consent of all the Homebuyers in the Project can be obtained. An IHA shall counsel all Homebuyers concerning the effects of the conversion, and shall obtain from each Homebuyer who consents to conversion of the Project a written commitment in the form prescribed in paragraph (b)(3) of this section. After conversion the Homebuyers will be entitled to all the benefits of the new MHO Agreement including IHA Homeownership Financing.

(2) Pending conversion, Existing Projects shall be operated in accordance with the ACC and MHO Agreements applicable prior to the effective date of this part, but any MHO Agreements executed prior to conversion shall be modified to include a commitment in the form prescribed in paragraph (b)(3) of this section.

(3) The commitments required under paragraph (b)(1) or paragraph (b)(2) shall contain the following language: "The Participant hereby agrees that when the project is converted in accordance with 24 CFR 805.428, he shall execute the form of Mutual Help and Occupancy Agreement applicable for such converted Project."

(c) *Changes not Required for Conversion.* (1) A Project may be converted without any change in the previously approved Development Program or previously executed

Construction Contract or previously approved value or form of the MH Contribution.

(2) A Project may be converted without requiring Homebuyers admitted to occupancy prior to the effective date of conversion to make Required Monthly Payments computed on the basis of a higher percentage of Family Income than the HUD-approved schedule in effect at the time of conversion.

(3) Use of the 25-year purchase price amortization period shall not be required as a condition for conversion. Instead the IHA and HUD shall estimate when the shorter amortization period under the existing MHO Agreement would end, and shall provide a Purchase Price Schedule ending at that time.

(d) *Purchase Price.* The purchase price of a home on the date of conversion shall be (1) the balance of debt attributable to the home, plus (2) the balance of the MH contribution not previously funded.

(e) *Transfer of Credits.* The balances in a Homebuyer's accounts shall be credited as of the date of conversion to the appropriate accounts under the new form of MHO Agreement in accordance with the following:

(1) *Unrefundable MH Reserve.* This reserve shall be credited with the balance, if any, of the MH Contribution furnished by the tribe.

(2) *Refundable MH Reserve.* This reserve shall be credited with the balance, if any, of the MH Contribution furnished by the Homebuyer.

(3) *MEPA.* This account shall be credited with the balance in the Homebuyer's individual operating reserve not previously applied to reduce Project debt.

§ 805.429 Counseling of homebuyers.

(a) *General.* The IHA shall provide counseling to Homebuyers in accordance with this section. The purpose of the counseling program shall be to develop (1) a full understanding by Homebuyer of their responsibilities as participants in the MH Project, (2) ability on their part to carry out these responsibilities, and (3) a cooperative relationship with the other Homebuyers and the IHA. Each Homebuyer shall be required to participate in and cooperate fully in all official pre-occupancy and post-occupancy counseling activities. Failure without good cause to participate in the program shall constitute a breach of the MHO Agreement.

(b) *Contents of the Program.* The counseling program shall consist of a pre-occupancy phase and a post-occupancy phase. While some elements of the program lend themselves more to one phase than the other, counseling in the two phases shall be coordinated and interrelated. The counseling program shall include, but not be limited to, the following areas:

(1) *Explanation of the MH Program.* The Homebuyers should be given a full explanation of the MH Program and how each Homebuyer relates to the program. Each Homebuyer should be made aware of his financial and legal responsibilities and those of the IHA.

(2) *MH Contribution.* Each Homebuyer should be given counseling necessary to assure that he has a full understanding of and will be able to provide the particular form or forms of contribution he is obligated to make under his MHO Agreement, as well as an understanding of his rights in connection therewith.

(3) *Property Care and Maintenance.* Each Homebuyer should be made familiar with the overall operation of the home, and its equipment (e.g., basic systems of the home such as electrical, plumbing, heating systems; major appliances such as refrigerators, ranges, dishwashers; minor appliances such as openers, toasters, the surroundings of the home, i.e. yards and gardens); the care and maintenance to be provided by the Homebuyer; the basic provisions of all applicable warranties; and the Homebuyer's responsibilities in connection with the warranties.

(4) *Budgeting and Money Management.* Each Homebuyer should be counseled in the importance of family budgeting and meeting financial obligations, methods for allocating funds for utilities and other necessities, the use of credit, and consumer matters.

(5) *Information on Community Resources and Services.* Each Homebuyer should be supplied with information relating to resources available in the community to provide services in areas such as educational opportunities, upgrading employment skills, legal services, dental and health care, child care for working mothers, counseling on family problems such as marital problems, alcoholism or drug problems.

(c) *Planning.* (1) The counseling program shall be carefully designed to meet the special needs of the MH Project, and shall be flexible and responsive to the needs of each Homebuyer. While many subjects lend themselves to group sessions, provision should be made for individual instruction as needed. Individuals should not be required to attend classes on material with which they are familiar unless they can actively participate in the instruction process.

(2) Special attention shall be directed to the needs of working members of the family for sessions to be held during a time when they can attend. There shall be recognition of the communication and value systems of the participants and an understanding and respect for their background and experience. Maximum possible use shall be made of local trainers to insure good communication and rapport.

(3) The program may be provided by the IHA staff, or by contract with another organization, but in either case with voluntary cooperation and assistance of groups and individuals within the community. It is essential that the training entity be completely knowledgeable concerning the MH Program. Where contractors are utilized, there shall be a close working relationship with the IHA, and there shall be a program for phasing in the IHA staff who will have the ongoing responsibility for counseling.

(4) In planning the program and use of the counseling funds (see paragraph (e) of this section), the IHA shall recognize that for a number of years after the initial counseling there are likely to be followup counseling needs. There may also be need for counseling in connection with turnover. Therefore, the IHA shall limit the amounts for the initial counseling, and shall reserve a reasonable amount for future counseling needs.

(d) *Submissions of Program for Approval.* (1) The IHA shall submit to HUD an application for approval of a counseling program and approval of funds thereof. The application shall be submitted before any counseling costs are incurred but no later than the submission of the working drawings and specifications.

(2) If the IHA intends to use the HUD-approved BIA Homebuyer Training Program (see Exhibit to Interdepartmental Agreement, Subpart B—Appendix I), the IHA shall submit, in lieu of an application for approval of the counseling program, a statement that the IHA intends to use the BIA program and an application for approval of the funds therefor.

(3) The application pursuant to paragraph (d)(1) of this section shall include a narrative statement outlining the counseling program, and copies of any proposed contract and other pertinent documents. This statement shall include the following:

(i) A showing that the training entity has the necessary knowledge and capability for effectively carrying out the proposed program, including a statement of the experience and qualifications of the organization and of

personnel who will directly provide the counseling.

(ii) A description of the method and instruments to be used to determine individual counseling needs.

(iii) A description of the scope and content of the proposed program, including a detailed breakdown of tasks to be performed, products to be produced, and a time schedule, including provision for progress payments for specific tasks.

(iv) A description of the methods and instruments to be used.

(v) A statement of the local community resources to be used.

(vi) The estimated cost and methods of payment for the task and products to be performed or produced, including separate estimates of costs for the pre-occupancy and post-occupancy phases of the program, and a description of services and funds to be obtained from non-HUD sources, if any.

(4) No counseling costs shall be incurred until HUD has approved the counseling program (or the submission of proposed costs in the case of the BIA Homebuyer Training Program).

(5) If the counseling program is to be substantially the same as previously approved by HUD, the IHA in lieu of a detailed submission pursuant to paragraph (d)(3) of this section may submit a statement identifying the previously approved counseling program and highlighting any proposed changes.

(e) *Funding.* The development cost for the project shall include an estimated amount for costs of the counseling program not to exceed $500 multiplied by the number of homes in the Project (including follow-up needs during the management stage, and counseling in connection with turnover). The approved amount for counseling shall be included in the Contract Award Development Cost Budget. If the approved amount is less than $500 per home, the Amount may, if necessary, be amended up to the $500 per home limitation with HUD approval, but not later than the Final Development Cost Budget.

(f) *Progress Reports.* IHAs shall submit quarterly progress reports to HUD (and to BIA in the case of the BIA Homebuyer Training Program), which shall include the following:

(1) A list of expenditures under the program, including salaries, costs of transportation, training materials, office expenses and other justifiable expenditures. All expenditures must be identified and supported by appropriate books and records of the IHA and must be certified as correct by the Executive Director and the Chairman of the IHA.

(2) Names of Homebuyers, the number of training sessions, descriptions of training activities, degree of participation, deficiencies noted, and other relevant information or observations.

(3) Effectiveness of training as shown by reports, results of tests, reduction in Required Monthly Payment delinquencies, reduction in maintenance costs or other factors.

(4) Proposed changes during the next period of training, including program changes to overcome deficiencies, and to provide training to any additional or substitute Homebuyers.

(g) *Termination of Counseling Program.* If HUD determines that an IHA's counseling is not being properly implemented in accordance with the approved program, the program may be terminated after notice to the IHA stating the deficiencies in program implementation, and giving the IHA 90 days from the date of notification to take corrective action, and in the event of termination the amount included in the Development Cost Budget for the program shall be reduced so as not to exceed expenses already incurred at the time of termination.

§ 805.430 Cross references to defined terms.

ACC. § 805.102.

Act. § 805.102.

Administration Charge. § 805.419(a).

Annual Contributions Contract. § 805.102.

BIA. § 805.102

Construction Contract. § 805.102.

Conventional (Production) method. § 805.203(c).

Conversion. §§ 805.102, 805.428.

Date of Occupancy. § 805.415(a)(1).

Development Program. § 805.102.

Event. § 805.425(a).

Existing Project. § 805.102.

Family Income. § 805.416(b).

Federally Recognized Tribe. § 805.104.

Force Account (production) method. § 805.203(e).

Home § 805.102.

Homebuyer. § 805.102.

Housing Assistance Plan (HAP). § 805.102.

HUD. § 805.102.

IHA. § 805.102.

IHA Homeownership Financing. §§ 805.102, 805.423.

IHS. § 805.102.

Indian. § 805.102.

Indian Area. § 805.102.

Indian Housing Authority. § 805.102.

Housing Organizations and Indian-owned Economic Enterprises. § 805.106(a).

Individually owned land. § 805.218(a)(2).

Initial Purchase Price. § 805.422(b).

Interdepartmental Agreement. § 805.102.

Maintenance Credit. § 805.418(a)(3).

MEPA. §§ 805.102, 805.421(b)(1).

MH. § 805.102.

MH Construction Contract. § 805.102.

MH Contribution. § 805.102.

MHO Agreement. § 805.102.

MH Program. § 805.102.

MH Project. § 805.102.

Mortgage. § 805.423(b).

Mortgate Amortization Schedule. § 805.423(b)(2).

Multi-unit site. § 805.216(i)(1).

Notice of Selection. § 805.407(b).

Operating expense. § 805.419(b).

Operating Reserve. § 805.420.

Preliminary Loan. § 805.209.

Preliminary Loan Contract. § 805.209(a).

Preliminary Site Report. § 805.217(a).

Price Payable to Contractor. § 805.413(d).

Program Reservation. § 805.102.

Project. § 805.102.

Project Coordination Meeting. § 805.208.

Project Loan. § 805.405(b).

Project Loan Note. § 805.405(b).

Project Note. § 805.405(c).

Promissory Note. § 805.423(b).

Purchase Price Schedule. § 805.422(b)(2).

Refundable MH Reserve Account. § 805.421(a).

Required Monthly Payment. § 805.416.

Scattered sites. § 805.216(i)(1).

Settlement Costs. § 805.422(d)(2).

Subsequent Homebuyer. § 805.422(c)(1).

Termination. § 805.424(a).

Total Contract Price. § 805.413(d).

Total Development Cost. § 805.102.

Total Family Income. § 805.416(b).

Tribal land. § 805.218(a)(2).

Tribe. § 805.102.

Trust or restricted land. § 805.218(a)(2).

Turnkey (production) method. § 805.203(b).

Unrefundable MH Reserve Account. § 805.421(a).

Utilities. § 805.416(b).

Utility Deduction. § 805.416(b).

Voluntary Equity Payments Account. § 805.421(b)(2).

Work order. § 805.418(a)(2)(iii).

Issued at Washington, D.C., October 30, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Tuesday
November 6, 1979

Part V

Department of the Interior

Fish and Wildlife Service

Endangered Species Determinations for *Arctomecon humilis* (Dwarf Bearpoppy) and *Berberis sonnei* (the Truckee Barberry) and Threatened Species Determination for *Coryphantha ramillosa* (Bunched Cory Cactus) and *Neolloydia mariposensis* (Lloyds Mariposa Cactus)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination that *Berberis sonnei* (the Truckee Barberry) Is an Endandered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that *Berberis sonnei,* the Truckee barberry, is an Endangered species. Only a single small population of this plant is known in the wild and it is vulnerable to changes in land use, vandalism, or horticultural collecting. The present action will afford it the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rule takes effect on December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 703/235-2760.

SUPPLEMENTARY INFORMATION:

Background

Berberis sonnei, the Truckee barberry, is a small colonial evergreen shrub that was first discovered along the banks of the Truckee River at Truckee, California in 1884. Despite intensive searching by botanists and foresters in subsequent years, the type locality was not rediscovered until 1973, when two small patches of the plant were found. Although its presence has been recorded at two other localities in the vicinity of Truckee, neither of these are known to support the barberry at the present time. Because of its colonial habit, it is possible that the two clumps in Truckee are clones, representing only two genetic individuals.

Section 12 of the Endangered Species Act of 1973 (hereinafter, the Act) directed the Secretary of the Smithsonian Institution to conduct a review of species of plants which were then or might become Endangered or Threatened according to the criteria set forth in the Act. That review led to the publication of House Document 94-51, Report on Endangered and Threatened Plant Species of the United States, which included a list of those plant species of the United States considered by the Smithsonian Institution to qualify for Endangered or Threatened status as defined in the Act. That report was accepted by the Service as a petition within the context of the Act, and was the principal basis for a notice published by the Service in the Federal Register of July 1, 1975 (40 FR 27824-27924), indicating that over 3,000 plant taxa were being considered by the Service for listing as Endangered or Threatened.

Subsequently, in the June 16, 1976, Federal Register (41 FR 24524-24572), the Service published a proposal advising that sufficient evidence was then on file to support determinations that 1,783 plant taxa were Endangered species as defined by the Act. That proposal indicated that each of the included taxa was in danger of extinction over all or a significant portion of its range because of one or more of the factors set forth in Section 4(a) of the Act as appropriate grounds for a determination of Endangered status; specified prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections, and factual information from all interested persons. A public hearing regarding the proposal was held on July 22, 1976, in El Segundo, California. Notification of the proposal and a solicitation for comments or suggestions were sent on July 1, 1976, to the Governor of California and other interested parties. *Berberis sonnei* was among the taxa included in House Document 94-51, the July 1, 1975, notice and the June 16, 1976, proposal.

In the June 24, 1977, Federal Register, the Service published a final rule (43 FR 32373-32381, codified at 50 CFR, Part 17) detailing regulations to protect Endangered and Threatened plant species. The rule established prohibitions and a permit procedure to grant exemptions to the prohibitions under certain circumstances.

Note.—The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Comments and Recommendations

Section 4(b)(1)(c) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register prior to adding any resident species of wildlife to the List of Endangered and Threatened Wildlife. In keeping with the spirit of that requirement, such a summary is included in any final rule listing a plant species as Endangered or Threatened.

All comments received during the period from June 16, 1976, to October 1, 1979, were considered in formulating the present final rule. Most comments did not address themselves to particular plant taxa, but rather expressed general points of view regarding plant conservation. Such general comments were summarized in the Federal Register of April 26, 1978 (43 FR 17910-17916).

The State of California's general comments were summarized in the August 11, 1977, Federal Register (42 FR 40682-40685). The State made no specific comments concerning *Berberis sonnei.*

A status report, prepared by the California Native Plant Society in cooperation with the U.S. Forest Service, was solicited by the Service after the official comment period had closed. Information contained in that report was incorporated into the present rule.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Berberis sonnei* (the Truckee barberry) is in danger of becoming extinct throughout all of its range due to the factors described in Section 4(a) of the Act, as amplified below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The exact original range of this species is unknown, but its present restriction to only one small population in Truckee may be the result of extirpation of populations from a formerly wider range as a result of urban development. Any further modification of its streamside habitat could cause the extinction of this only known population.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Species of *Berberis* are often cultivated, and *B. sonnei* has considerable potential as an ornamental plant. Removal of plants for transplant from the only known population could seriously threaten its continued survival. The species has been propagated at a botanic garden and the availability of cultivated material from that source may reduce any potential collecting pressure on the wild population.

3. *Disease or predation.* Not known to affect this species.

4. *The inadequacy of regulatory mechanisms. Berberis sonnei* is listed as Endangered by the State of California. Federal listing will reinforce and supplement the protection available to this plant under State law.

5. *Other natural or manmade factors affecting its continued survival.* Seed set and seed viability are low in this species, possibly reflecting genetic depletion as a result of small population size.

Effect of the Rulemaking

Section 7(a) of the Act, as amended, provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for interagency cooperation were published on January 4, 1978, in the Federal Register (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with section 7(a) of the Act. The present rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to *Berberis sonnei*. Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered species of plants are found at § 17.61–17.63 (42 FR 32373–32381).

With respect to this plant, all pertinent prohibitions of Section 9(a)(2) of the Act, as implemented by 50 CFR 17.61 would apply. These prohibitions, in general, make it illegal for any person subject to the jurisdiction of the United States to import or export Endangered plants; deliver, receive, carry, transport, or ship them in interstate commerce in the course of a commercial activity; or to sell or offer them for sale in interstate or foreign commerce.

Section 10 of the Act and the regulations referred to above provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service will review this plant to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

Subsection 4(a)(1) of the Endangered Species Act of 1973, as amended, states:

At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Berberis sonnei is presently known only from one small population on private land. Because of its extreme vulnerability and potential interest to horticulture, it is not considered prudent at this time to precisely identify the area in which it occurs by the specification of a Critical Habitat.

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order, by family, genus, and species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Berberidaceae—Barberry family:						
Berberis sonnei	Truckee barberry	U.S.A. (CA)	Entire	E	75	NA

Dated: October 31, 1979.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 79-34206 Filed 11-5-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Determination That *Coryphantha ramillosa* and *Neolloydia mariposensis* Are Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The Service determines *Coryphantha ramillosa* (bunched cory cactus) and *Neolloydia mariposensis* (Lloyds Mariposa cactus) to be Threatened species. Both of these cacti are native plants of Texas and their ranges overlap into Mexico. Until recently the ranges of these two cacti had remained undeveloped and very remote. However, future development currently threatens these species and their habitats and will make these cacti more accessible to collectors. Over-collection is the other primary threat to the continued existence of these cacti. This action will extend to these plants the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 20240, 202/235–2771.

SUPPLEMENTARY INFORMATION: These cacti are both native to Texas.

Coryphantha ramillosa occurs in two Texas counties and overlaps into Mexico, while *Neolloydia mariposensis* occurs in one Texas county and probably extends into Mexico since its known range is within one mile of the border. Both of these cacti occur on dry desert lands in a very remote area. *Coryphantha ramillosa* is a spherical cactus which reaches 3½ inches in diameter, and has pinkish to rose purple-colored flowers. *Neolloydia mariposensis* is spherical to egg-shaped and reaches 3½ inches tall and its flowers are pinkish. The continued existence of these species is in danger and this rule will extend to them the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs summarize the actions leading to this final rule and the factors which are currently threatening this cactus.

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94–51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the Federal Register (41 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the Federal Register (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the above mentioned Federal Register publication.

Coryphantha ramillosa and *Neolloydia mariposensis* were included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Four general hearings were held in July and August 1976 on the June 16, 1976, proposal: Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. A fifth public hearing was held on July 9, 1979, in Austin, Texas for seven Texas cacti, including these two cacti, and one fish.

In the June 24, 1977, Federal Register, the Service published a final rulemaking (42 FR 32373–32381, codified at 50 CFR Part 17) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

Note.—The Department has determined that this rule does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, Federal Register publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Some of these comments had addressed the general problems of cacti conservation. Additionally many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, Federal Register final prohibitions and permit provisions. No comments dealing specifically with *Coryphantha ramillosa* or *Neolloydia mariposensis* were received during these official comment periods. The Governor of Texas and the President of Mexico were notified of the proposed action, but neither submitted any comments dealing specifically with these two cacti. The Texas Forest Service commented on the proposed Texas trees and requested more time for comments beyond the August 16 comment period. The Service has continued to accept comments since the publication of the proposal in 1976.

On July 9, 1979, the Service held a second public hearing in Austin, Texas and again solicited comments on seven Texas cacti and one fish. Dr. Del Weniger, a botanist, who the Service contracted to prepare status information on Texas cacti, commented concerning the current status of *Coryphantha ramillosa* and *Neolloydia mariposensis*. He noted the threats to these cacti, and recommended their status be Threatened. The El Paso Cactus and Rock Club submitted a written comment that they favored the proposed action. No other comments dealt specifically with either *Coryphantha ramillosa* or *Neolloydia mariposensis*.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Coryphantha ramillosa* Cutak (bunched cory cactus) and *Neolloydia mariposensis* (Hester) Benson (Lloyds Mariposa cactus; synonyms: *Echinomastus mariposensis* Hester, *Echinocactus mariposensis* (Hester) Weniger) are both likely to become Endangered species within the foreseeable future throughout all or a significant portion of their range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to these two cacti are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.—Coryphantha ramillosa*—This species occurs in two Texas counties and into Mexico primarily on large privately owned ranches. This cactus also occurs within the Big Bend National Park and on a State wildlife preserve. The areas where this cactus occurs are very remote and this has protected the species somewhat. However, there is a current move to provide recreational access to the newly designated Lower Canyons of the Rio Grande scenic river section. If this occurs it could result in the destruction of populations of this species and its habitat as well as making these cacti more easily accessible to collectors. Ranching operations have had little effect on the cactus to date, however, if some modern range management practices were adopted, these could have an adverse effect upon the species. The area this species occupies in Mexico is very remote and no planned development is known at this time.

Neolloydia mariposensis—This cactus is known from one county in Texas and some botanists have noted that its range may extend into Mexico. The area this species occupies is primarily privately owned land, but it also is found on the Big Bend National Park. Most of the range of this cactus is very remote and this offers some protection to this species. However, botanists have noted that future residential development in the form of vacation homes and ranchettes could threaten this species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As with many other cacti, both of these species are in world-wide demand by collectors of rare cacti. Removal of plants from the wild has occurred and has resulted in the depletion of natural populations. The remoteness and inaccessibility of their ranges have offered some protection to these two species. However, if the range of these cacti becomes further developed and more accessible, the pressure from over-collection would increase. *Coryphantha ramillosa* is not commonly found in the cactus trade at present, but this will change once it is more accessible. *Neolloydia mariposensis* is currently found in the trade (especially local trade), which will increase as the plants become more accessible.

3. *Disease or predation* (including grazing). Current ranching operations within the range of these two species have not adversely affected these species. However, modern range management practices and an increased use of the area for grazing could threaten these species.

4. *The inadequacy of existing regulatory mechanisms.* Texas has no state laws protecting Endangered and Threatened plants as yet. Both of these cacti occur primarily on privately owned lands but also on National Park Service lands. The taking or vandalism of plants on private lands is not prohibited by the Endangered Species Act of 1973. National Park Service regulations prohibit the possession, destruction, injury, defacement, removal or disturbance of any plant in natural, historic, and/or recreational areas [36 CFR 2.20]. *Coryphantha ramillosa* also occurs on a State owned wildlife preserve where the removal of plants is also restricted without a permit. All these regulations, however, are difficult to enforce, since law enforcement officers for these agencies cover large areas. Taking and vandalism remain threats to Endangered and Threatened plant species occurring on these lands.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the cacti and, therefore, does not regulate interstate or intrastate trade in the cactus or habitat destruction. No other Federal protective laws currently apply specifically to these species. The Endangered Species Act will now offer additional protection for these cacti.

5. *Other natural or manmade factors affecting its continued existence.* Low total population levels intensify the adverse effects of threats to these two plants and their habitats.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with, and with the assistance of, the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with, and with the assistance of, the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. New regulations are being developed to implement the 1978 Amendments at this time. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Threatened species. The regulations which pertain to Threatened plant species, are found at §§ 17.71–17.72. Section 9(a)(2) of the Act, as implemented by § 17.71 would apply. With respect to any species of plant listed as Threatened, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce; with the exception of seeds of cultivated specimens which are exempt from these provisions. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations codified at 50 CFR Part 17 provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Threatened plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of these plants from the U.S. or an export document from Mexico, depending on where the specimens originated. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Services's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

Coryphantha ramillosa and *Neolloydia mariposensis* are both threatened by taking (see discussion under factors 2 and 4 in the conclusion section of this rule) and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

The Service now proceeds with the final rulemaking to determine these species to be Threatened under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

The primary author of this rule is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20204, (703/235–1975). Status information for these species was

compiled by Dr. Del Wengier (Our Lady of the Lake Univ., San Antonio, Texas).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I Title 50 of the U.S. Code of Federal Regulations is amended as follows: 1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
Coryphantha ramillosa	Bunched cory cactus.	U.S.A. (TX), Mexico (Coahuila).	Entire	T	77	NA
Neolloydia mariposensis.	Lloyds Mariposa cactus.	U.S.A. (TX)	Entire	T	77	NA

Dated: October 31, 1979.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 79-34207 Filed 11-5-79; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Arctomecon humilis* Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Arctomecon humilis* (dwarf bearpoppy), a native plant of Utah, to be an Endangered species. Habitat destruction through land development and off-road vehicle use threatens the plant in various parts of its range. Removal of the plants by private collectors continues to deplete populations even though the species will not survive in cultivation. This action will extend to this species the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rule becomes effective on December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Arctomecon humilis was discovered in 1874, and described as a new species in 1892. It is known only from one geological formation in southwestern Utah, in the vicinity of St. George and Bloomington. It is threatened by general land development and collecting for home gardens, even though it does not survive in cultivation because of its exacting soil requirements. An old report of the plant's presence in Arizona has not been confirmed by recent field work.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered by the Smithsonian Institution to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the Federal Register (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the Federal Register (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned Federal Register publication. *Arctomecon humilis* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Public hearings on this proposal were held on July 22, 1976, in El Segundo, California and on July 28, 1976, in Kansas City, Missouri.

In the June 24, 1977, Federal Register, the Service published a final rule (42 FR 32373-32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this listing rule does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general intent of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the Federal Register prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, Federal Register publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916).

Additionally, many comments were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, Federal Register final rule (42 FR 32373-32381) on plant trade prohibitions and permit provisions. Requests for copies of these final trade regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 703/235-1903.

The Governors of Utah and Arizona were notified of the proposal to list *Arctomecon humilis* as an Endangered species. No reply regarding the species has been received from either State government. In March 1978, Dr. Stanley Welsh, of Brigham Young University,

published in the *Great Basin Naturalist* that Endangered status for *Arctomecon humilis* is correct. In August 1978, Dr. Duane Atwood of the U.S. Forest Service, published in *Mentzelia* that "unless steps are taken to protect the species and its habitat it will become extinct."

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Arctomecon humilis* Coville (dwarf bear-poppy; synonum: Coville Bearclaw poppy) is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Arctomecon humilis* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The entire range of *Arctomecon humilis* is restricted to the southwestern corner of Washington County, Utah. There is an old record from adjacent Mohave County, Arizona, but this report is probably not accurate. The limited habitat of this bear-poppy is threatened by housing and industrial development. The building of the city of Bloomington, Utah eliminated about a third of the known habitat. A potential threat is strip mining of gypsum deposits. Commercially valuable deposits occur at or near the surface of much of the habitat of the species. In addition, all existing habitat has heavy use by motor bikes and other off-road vehicles. The Warner Valley Power Project calls for the routing of roads and powerlines through the general area where this species occurs; the main proposed access road is adjacent to habitat of the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This plant is taken by persons for ornamental use in their own gardens. However, because of its specialized habitat, and in particular its exacting soil requirements, the species does not survive long when transplanted. Removal of plants from the wild continues to result in the depletion of natural populations. Attempts to propagate the species from seed have also proved futile.

3. *Disease or predation* (including grazing). Not applicable to this species.

4. *The inadequacy of existing regulatory mechanisms.* Although Bureau of Land Management regulations (43 CFR 6010.2) prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized, they do not address this bear-poppy directly. Further, the majority of the individuals of this species are not on BLM-administered land. The Endangered Species Act will now offer additional protection for the plant.

5. *Other natural or man-made factors affecting its continued existence.* Restriction to a specialized and localized soil type, and a low total population level consisting of about five small, scattered, disjunct populations with a resultant restricted gene pool, are factors which tend to intensify the adverse effects of threats to the plants.

Effects of the Rule

Section 7(a) of the Act, as amended, provides:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the Federal Register (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. This rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species. New rules implementing the 1978 Amendments to Section 7 are being prepared now by the Service. The Service and the Bureau of Land Management anticipate that conservation of *Arctomecon humilis* can be accomplished with the continued development of the Warner Valley Power Project.

Endangered and Threatened species regulations in Title 50 of the code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to Endangered plant species are found at §§ 17.61–17.63 (42 FR 32378–32380).

Section 9(a)(2) of the Act, as implemented by § 17.61, will apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate for foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the Federal Register of June 24, 1977 (42 FR 32373–32381, codified at 50 CFR Part 17), provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plants. Few permit requests for this species are anticipated.

When these plant regulations implementing Sections 9(a)(2) and 10 of the Act were proposed (41 FR 22915), many comments questioned the lack of any taking prohibition, and some suggested that the lack of such a prohibition may be a reason for keeping information on the localities of some taxa secret. When these regulations were made final on June 24, 1977, the summary of comments included the following (42 FR 32376):

> The "taking" of plants is not prohibited by Section 9(a)(2) of the Act and, therefore, cannot be included within these regulations. However, the "taking" of plants is sometimes regulated by local, State, or Federal agencies under other legislation, and the Federal responsibilities under Section 7 apply if taking of individual plants would jeopardize the continued existence of the Endangered or Threatened species.

Effect Internationally

The Service will review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention, and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of

Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Arctomecon humilis has been and is threatened by taking, and the taking of plants is not directly prohibited by the Endangered Species Act of 1973. A majority of the plants are not on land administered by the Bureau of Land Management, which does have general prohibitions on removal of plants but does not address this species directly. The proximity of the plants to urban areas intensify pressures on them. Publication of Critical Habitat maps would make this species more vulnerable to taking and vandalism, and therefore it would not be prudent to determine Critical Habitat.

Arctomecon humilis was proposed for listing as an Endangered species on June 16, 1976 (41 FR 24556). Since it has been determined not to be prudent to designate Critical Habitat for this species at this time, the Service now proceeds with the final rule to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884).

The primary authors of this rule are Drs. Bruce MacBryde and Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975). Status information for this species was prepared by Drs. Stanley L. Welsh, Brigham Young University, and N. Duane Atwood, U.S. Forest Service.

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Papaveraceae—Poppy family:						
Arctomecon humilis	Dwarf bear-poppy	U.S.A. (UT)	Entire	E	74	NA

Dated: October 31, 1979.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 79-34208 Filed 11-5-79; 8:45 am]

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Federal Register

Tuesday
November 6, 1979

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program; Proposed Guidelines

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Proposed guidelines for reclamation programs and projects.

SUMMARY: Public Law 95-87, The Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201 *et seq.*) establishes an Abandoned Mine Reclamation Fund and provides the authority to use monies from this fund to reclaim and restore land and water resources adversely effected by past mining. OSM published final rules on October 25, 1978 (43 FR 49932) which established the abandoned mine land reclamation program and procedures for administering Title IV of SMCRA. OSM is today publishing proposed guidelines to assist States, Indian tribes, U.S. Department of Agriculture, and OSM in interpreting and applying the general reclamation requirements for individual programs and projects contained in SMCRA and the regulations. These guidelines are proposed in order to promote uniformity in programs and projects that are carried out by the different entities assigned the responsibility for administering the abandoned mine land programs and to provide a common basis for the conduct of future program and project evaluation activities.

DATES: The comment period on the proposed guidelines will extend until January 7, 1980. All written comments must be received at the address given below by 5 p.m. on that date.

Public information meetings to accept comments on the proposed guideline will be held on the following dates:

November 26, 1979—Washington, D.C.
November 28, 1979—Charleston, West Virginia.
November 29, 1979—Knoxville, Tennessee.
December 4, 1979—Oklahoma City, Oklahoma.
December 5, 1979—Denver, Colorado.
December 7, 1979—Indianapolis, Indiana.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, Administrative Records Office, Room 135 South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, telephone (202) 343-4228. All comments received will be available for further inspection at the same address.

Public information meetings will be held at the following locations:

Washington, D.C.—Department of the Interior Auditorium, 18th & C Streets, NW.—November 26, 1979.
Charleston, West Virginia—Charleston National Bank, Auditorium, Room 412, Virginia and Capitol Streets—November 28, 1979.
Knoxville, Tennessee—Holiday Inn South, located approximately 0.5 mile north of Knoxville Airport on Highway 129 in Alcoa, Tennessee—November 29, 1979.
Oklahoma City, Oklahoma—Senate Chamber, State Capitol Building—December 4, 1979.
Denver Colorado—Room 269, Post Office Building, 1823 Stout Street—December 5, 1979.
Indianapolis, Indiana—S.E. Meeting Room, Indiana War Memorial, 431 North Meridan Street—December 7, 1979.

FOR FURTHER INFORMATION CONTACT: M. Richard Nalbandian, Chief, Division of Reclamation Planning and Standards; Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, (202) 343-4057.

SUPPLEMENTAL INFORMATION: OSM is publishing proposed guidelines to be considered when developing plans for abandoned mine land programs and projects. These guidelines are published in this Federal Register immediately following this notice. A notice of decision to develop these guidelines was published on August 1, 1979 (44 FR 45316) with a request for public comment on this decision. Seven public comments were received as a result of this public comment request. Six of these commenters supported OSM's decision to develop guidelines rather than regulations and the seventh commented on a specific area concerning the planting of trees rather than grasses on certain abandoned mine land areas.

The guidelines as proposed vary from the outline published in August in that guideline 3 (Purpose for Which Reclamation is Proposed) and guideline 4 (Selection Process for Considering Reclamation Activities) under the General Areas of Concern have been combined into one guideline titled Selection Criteria. Guideline 12 (Noncoal Projects and Impact Assistance) has been separated into two guidelines titled "Noncoal Project" and "Impact Assistance." Also guideline 11 (Site Characteristics) under Specific Control Parameters has been eliminated and this material has been incorporated into the new Selection Criteria guideline. A new Section A has also been added to the proposed guidelines which contains definitions of terms applicable to the guidelines.

Initial draft guidelines were prepared by the Regional offices of OSM and have been informally reviewed by States, Indian tribes and Federal agencies before the planning group consisting of representatives from States, Indian tribes, OSM, and the U.S. Department of Agriculture developed these proposed guidelines.

Environmental Impact Statement

In connection with the development of these guidelines, OSM has been preparing an environmental impact statement assessing the impacts of various alternatives considered for carrying out the Abandoned Mine Lands Reclamation program. The proposed guidelines are one facet of the program that is assessed in this draft environmental impact statement. The availability of drafts of this statement is being announced through a separate Federal Register notice. The content of the draft environmental impact statement was considered for purposes of reaching decisions on the content of these proposed guidelines. The content of the final environmental impact statement will be carefully considered by officials of OSM and the Department of the Interior before decisions are made on the content of the final guidelines.

Public Comment Period

The comment period on the proposed guidelines will extend until January 7, 1980. All written comments must be received at the address given above by 5 p.m. on that date. Comments received after that hour will not be considered or included in the administrative record for the development of these guidelines.

Comments may also be presented at the public information meetings scheduled on the dates and at the locations given below. OSM cannot insure that written comments received or delivered during the comment period to any other locations than specified above will be considered and included in the administrative record for these guidelines.

Written and oral statements should be as specific as possible. Any and all comments will be appreciated but those most likely to influence decisions on these guidelines will be those that propose specific recommended changes to the wording of the guideline. All proposed changes should be supported with an explanation of the rationale for each recommendations.

Availability of Copies

Additional copies of the proposed guidelines and a listing of the technical references used to develop the guidelines are available for inspection

and may be obtained at the following offices:

OSM Headquarters, Department of the Interior, Room 135, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240 (202) 343-4728.
OSM Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard, Charleston, WV 25301, (303) 342-8125.
OSM Region II, 530 Gay Street, SW., Suite 500, Knoxville, TN 37902, (615) 637-8060.
OSM Region III, Federal Building and U.S. Courthouse, Room 510, 46 East Ohio Street, Indianapolis, IN 46204, (317) 269-2603.
OSM Region IV, 818 Grand Avenue, Room 501, Kansas City, MO 64116, (816) 374-5162.
OSM Region V, Post Office Building, 1832 Stout Street, Room 270, Denver, CO 80205, (303) 837-5511.

Public Information Meetings

Public information meetings on the proposed guidelines will be held on the dates and at the locations shown below. All the meetings will begin at 10:00 a.m. local time and continue until all commenters are heard.

November 26, 1979—Washington, D.C.—Department of the Interior Auditorium, 18th & C Streets, NW., Washington, D.C.
November 28, 1979—Charleston, WV—Charleston National Bank, Auditorium, Room 412, Virginia and Capitol Streets, Charleston, WV.
November 29, 1979—Knoxville, TN—Holiday Inn South (located approximately 0.5 mile north of Knoxville Airport), Highway 129, Alcoa, TN.
December 4, 1979—Oklahoma City, OK—Senate Chamber, State Capitol Building, Oklahoma City, OK.
December 5, 1979—Denver, CO—Room 269, Post Office Building, 1823 Stout Street, Denver, CO.
December 7, 1979—Indianapolis, IN—SE. Meeting Room, Indiana War Memorial, 431 North Meridan Street, Indianapolis, IN.

Persons wishing to comment at the public meetings on the proposed guidelines should contact the appropriate person listed below. Individual comments at these meetings will be limited to 15 minutes. The meetings will be transcribed. Filing a written statement at the time of giving oral comments would be helpful and facilitate the job of the court reporter. Submission of written statements to the person identified below for these hearings, in advance of the hearing date whenever possible, would greatly assist officials from Federal, State, and tribal agencies who will attend the meetings. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked to clarify or illicit more specific information from the person commenting. After the public information meetings, the record will remain open for receipt of additional written comments until January 7, 1980.

The public information meetings will continue on the days identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard at the end of scheduled speakers. The meetings will end on each day after all people scheduled to comment and persons present in the audience who wish to comment have been heard. Persons not scheduled to comment, but wishing to do so, assume the risk of having the public information meetings adjourned on any given day unless they are present in the audience at the time all scheduled commenters have been heard.

Persons to contact to schedule time on the agenda at any of the specific public information meetings and to deliver advance submissions to are as follows:

Washington—(202) 343-6786, Ted Ifft, OSM, Room 221, Interior South Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.
Charleston—(304) 344-9639, Donald Beightol, OSM, First Floor, Thomas Hill Building, 850 Kanawha Boulevard, Charleston, WV 25301.
Knoxville—(615) 637-8060, George Miller, OSM, 530 Gay Street, SW., Suite 500, Knoxville, TN 37902.
Kansas City—(816) 374-3069, Donald O'Bryan, OSM, Scarritt Building, Room 503, 818 Grand Avenue, Kansas City, MO 64106.
Denver—(303) 837-5918, Luther Clemmer, OSM, Post Office Building, Room 270, 1832 Stout Street, Denver, CO 80202.
Indianapolis—(317) 269-2649, Russell Miller, OSM, Federal Building and U.S. Courthouse, Room 524, 46 East Ohio Street, Indianapolis, IN 46204.

Drafting Information

The proposed guidelines were drafted by the Abandoned Mine Land staffs of the five Regional offices of OSM under the direction of Theodore H. Ifft, OSM—Division of Reclamation Planning and Standards. He can be contacted by phone at (202) 343-6786 or by mail addressed to Office of Surface Mining, Abandoned Mine Lands, Interior South Building, Room 221, 1951 Constitution Ave., NW., Washington, D.C. 20240.

Technical assistance was provided by a planning group composed of representatives from the States, Indian tribes, and USDA.

Note.—The Department of the Interior has determined that the proposed guidelines are *not* a significant rule under Executive Order 12044.

Dated: November 1, 1979.

Joan M. Davenport,
Assistant Secretary, Energy and Minerals.

Abandoned Mine Land (AML) Reclamation Program: Proposed Guidelines For Reclamation Programs and Projects

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A. Definitions

1. *Abandoned Property*—Real and personal property, associated with past mining activities, that has been forsaken or deserted by an owner. This includes real estate, structures, and equipment.

a. *Abandoned Structure*—Abandoned permanent improvements or fixtures firmly attached to the land and considered as part of the real property. Abandoned structures include but are not limited to coal tipples, coal washers, storage and grading facilities, loading docks, rail spurs, concrete foundations, dams, reservoirs, and bridges. Other items such as crushers, elevators, bins, loaders, conveyors and similar equipment are within this definition if firmly affixed to the land.

b. *Abandoned Equipment*—Abandoned movable items not affixed to the land. Such items are considered as personal property and include equipment and dismantled machinery not affixed to the land and which could be moved. These items include but are not limited to shovels, scrapers, tires, machinery parts, trailers, trucks, electrical substations on skids, feeders, and loaders.

C. *Disposal*—The act of sale, federal utilization, demolition, removal, and the burning and burial of scrap or other debris resulting from abandoned structures and equipment.

2. *Administering Agency*—The agency that has the responsibility for carrying out a reclamation program or project. This includes OSM for Federal Reclamation Projects; U.S.D.A., Soil Conservation Service for the Rural Abandoned Mine Program; designated State reclamation agencies for projects carried out under an approved State Reclamation Plan; and Indian tribes for projects carried out under an approved Indian Reclamation Plan.

3. *Daylighting*—A term to define the surface mining procedure for exposing an underground mined area to remove all of the remaining mineral underlying the surface.

4. *Emergency*—A sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program procedures.

5. *Restoration of the Hydrologic Balance*—The stabilization and maintenance of the relationship between the quality and quantity of water inflow to water outflow from an abandoned mine land site. This relationship should consider water storage within the hydrologic unit as it now exists or may have existed and measures needed to reduce or eliminate pollution to receiving surface and subsurface waters.

6. *Toxic-Forming Materials*—Earth materials or wastes resulting from mining operations which, if acted upon by air, water, weathering, or microbiological processes are likely to produce chemical or physical conditions in soils or water that are substantially detrimental to the biota or water use.

B. Program Considerations

1. Land, Water or Mineral Rights Required for Reclamation

a. In addition to the rights of entries required by 30 CFR 877, other consents required by the specific type of reclamation program should be obtained. In water limited areas reclamation programs that propose to restore water quality or quantity should not be undertaken until the appropriate water right consents are obtained. Consent of the owner and/or lessee of mineral rights should also be obtained if the reclamation work disturbs a mineral seam. All necessary consents should be obtained for a time period sufficient to carry reclamation to completion. The administering agency has the responsibility to assure that no reclamation work is carried out without such consents.

b. Written consent from the owner of record and lessee or his authorized agent should be the preferred means for obtaining agreements to enter lands in order to carry out reclamation work. Entry by use of police power is restricted to those reclamation projects that will protect public health and safety as authorized under Section 403(1), 403(2), 409(c) and 410 of the Act and should only be undertaken after due care and deliberation has exhausted all possibilities of obtaining written consents.

c. Acquisition of property to secure the necessary rights to carry out reclamation work may be undertaken only under the specific conditions enumerated in Sections 407 and 409 of the Act and Part 879 of the Abandoned Mine Land Reclamation Program's Final Rules.

2. Jurisdictional Responsibilities

a. The administering agency should consider how existing legislative requirements will impact its program, such as treaties, Federal laws, Executive Orders, State laws, Tribal laws, local laws, ordinances, and Regional commission requirements. Timely coordination with the various agencies charged with implementing these requirements is necessary. Among the Federal laws to consider are—

Bald Eagle Protection Act, as amended (16 U.S.C., 661 et seq.);
Clean Air Act, as amended (42 U.S.C. 7401 et seq.);
Clean Water Act of 1977, as amended (33 U.S.C. 1151 et seq.);
Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);
Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 721 et seq.);
The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721 et seq.);
Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.);
Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.);
Mineral Leasing Act of 1970, as amended (30 U.S.C. 181 et seq.);
Mining and Minerals Policy Act of 1970 (16 U.S.C. 21a);
National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);
National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.);
Refuse Act of 1899 (33 U.S.C. 407);
Safe Drinking Water Act, as amended (42 U.S.C. 7401 et seq.);
Solid Waste Disposal Act (42 U.S.C. 3251–3259);
Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and
Wild and Scenic Rivers Act, as amended (16 U.S.C. 1274 et seq.).

b. Many of the numerous environmental concerns associated with reclaiming abandoned mine lands will be identified and resolved when a thorough effort is given to the environmental assessment or evaluation

that is required for every proposed AML reclamation project except for emergencies under Section 410. The objective of each administering agency should be to do a thorough environmental analysis for each reclamation project.

3. Selection Criteria

a. Procedures for selecting sites to carry out reclamation activities should incorporate relative weighting factors to rank the proposed sites. These procedures should give higher weights to the priorities of the Act (as outlined in Section 403 of the Act and 30 CFR 874.13) in descending order of their listing. In addition to weights assigned according to priorities, other factors including but not limited to those listed in 30 CFR 874.14 should be considered. Negative weights should be given to adverse impacts resulting from the proposed project.

(1) Preference should be given to reclamation projects that—

(a) Obtain landowner(s) consent to participate in post reclamation maintenance activities of the area,

(b) Provide multiple benefits to the landowner(s), and

(c) Provide off-site public benefits.

b. The administering agency should consider the following items in determining whether a site should be reclaimed:

(1) The lands proposed for reclamation must be eligible as defined by Sections 404 and 409 of the Act.

(2) The proposed project should utilize available funds in an effective manner. Projects which require continuous maintenance and/or operating costs should be undertaken only if a commitment exists to bear these indefinite costs.

(3) Problems associated with the site can be abated by utilizing proven technology to prevent or minimize future adverse effects.

(4) Site characteristics, including disturbed and surrounding soil material, and subsurface geologic and hydrologic conditions are compatible with the proposed reclamation plan and consistent with the planned post reclamation land use. Site characteristics to be investigated include but are not limited to—

(a) Percent and length of slope,

(b) Amount of coarse fragments,

(c) Soils pH,

(d) Toxic substance occurrence,

(e) Depth to water table, and

(f) Potential for soil slippage.

(5) Reclamation can be carried out in such a manner as to minimize maintenance to achieve a self-sustaining reclamation solution. Self-sustaining implies a degree of reclamation which is stable and self-renewing under the prevailing environmental and land-use conditions.

(6) If the project area is to be remined in the foreseeable future, reclamation should only be considered where the off-site adverse impacts from the affected area are so severe as to cause significant damage to public health and safety or to the environment if not abated before remining takes place.

(7) Abatement of subsidence due to abandoned underground mines should only be considered in an emergency or extreme danger situation. Reclamation activities should include all the necessary steps to abate or eliminate the emergency or extreme danger condition. Structures should only be moved as a last resort with the approval of the head of the administering agency.

(8) Abatement or control of abandoned coal mine fires should only be considered where the problems associated with the fire have created or have the potential to create an emergency or extreme danger situation. Reclamation activities should include all necessary steps to abate or eliminate the emergency or extreme danger condition.

(9) Land use conditions should be evaluated as part of the project planning process. This evaluations should consider the following items:

(a) Reclamation activities can be planned in a manner that is compatible with the proposed land use of the reclaimed land as intended by the landowner(s). Post-reclamation land use should be compatible with surrounding land uses, comply with local, State, tribal, and Federal requirements, and be acceptable to the community involved. Applicants for reclamation assistance should be consulted to arrive at the land use selected. The planning process should also include documentation of the impacts of these items.

(b) Post-reclamation land use should result in protecting and possibly improving the natural resource base of the area, enhance the quality of the environment, protect people, and improve the quality of life.

(10) Aesthetic values should be evaluated as part of the project planning process. This evaluation should include but not be limited to an analysis of—

(a) The adversity and/or desirability of the visual impact,

(b) The viewing audience, and

(c) The proximity to public facilities and other high use areas.

c. Reclamation Extent—The amount of reclamation performed on a site depends upon the priority assigned, availiability of funding, and available technology for, restoring the site.

(1) Consideration should be given to eliminating all the problems associated with an abandoned mine site as long as the available solutions to the problem are cost-effective. All the lower priority, cost-effective problems should be included in the reclamation plan when contracting for the elimination of the high priority problem. Factors that should be considered in determining the amount of reclamation to be done at a site include but are not limited to—

(a) Area of the affected land and water,

(b) Uniformity of the problem(s) over the entire site,

(c) Proposed land use of the area,

(d) Funds available versus cost of reclamation,

(e) Off-site benefits,

(f) On-site benefits,

(g) Landowner participation,

(h) The necessity of coming back on the site later for additional reclamation work,

(i) Multiple land use benefits,

(j) Cost effectiveness of the proposed work, and

(k) The possibility of remining.

(2) The administering agency should determine the minimum reclamation needed to make the site environmentally suitable. The administering agency should confer with the landowner(s) and, if possible without incurring additional costs above that required for the minimum reclamation needed, accommodate the landowner(s) desires.

d. Cooperative Efforts.

(1) Agreements should be initiated, if possible, for all reclamation projects between the administering agency and the landowner(s). If an agreement is unattainable or the landowner(s) does not want to participate in the reclamation project, then "entry and consent to reclaim" procedures which are established in 30 CFR 877.13 may be followed or it may be desirable to take no reclamation action at all.

(2) a maintenance agreement between the administering agency and the landowner(s) may be incorporated as part of the reclamation plan to insure the continued success of the reclamation project. An estimated cost of operation and maintenance activities as well as the financial and administrative responsibilities should be identified in any agreement between the administering agency and the landowner(s).

e. Joint Projects—To meet the goals and objectives of reclamation projects joint undertakings between the administering agency and the landowner(s) or other agencies may be

desirable. The possibility exists for these type projects to extend the amount of the reclamation work above and beyond minimal reclamation activities needed to satisfy the top priorities of the act.

4. Emergency Projects

a. Authority for Emergency Reclamation.

(1) Authorities and requirements for rights of entry to carry out emergency reclamation projects are contained in Section 410 of the act and Part 877.14 of the Abandoned Mine Land Reclamation Program's Final Rules.

b. Emergency Project Considerations.

(1) Emergencies are differentiated from extreme danger (Priority 1) projects by careful interpretation of the phrases "sudden danger" and "high probability of substantial physical harm" in the definition of "emergency" contained in 30 CFR 872.5.

(2) Once it has been determined that an emergency exists on lands eligible for reclamation under the Act, all agencies should act expeditiously to restore, abate, control, prevent or otherwise eliminate the emergency situation by removing the threat to the health, safety, or general welfare of the people involved.

(3) Justification for emergency action must be based on whether immediate action is crucial to eliminate the danger of harm to *persons* and that no other person or agency will expeditiously act to eliminate the emergency situation. The time element referenced by the phrase "before the danger can be abated under normal program operation procedures" means that the danger is so imminent that time is not available for normal project contractural and budget procedures.

(4) Unnecessary or indiscriminate application of emergency procedures will only serve to frustrate normal program operations and place OSM in a reactionary posture.

c. Project Examples—The following list is used to illustrate examples of *sudden* situations having a high probability of *substantial* physical harm to the health, safety, and general welfare of *people:*

(1) Subsidence suddenly occurring near populated areas.

(2) Deep mine water "blow-outs" near populated or highly used public areas.

(3) Slides caused by movement of spoil material or mass movement due to drainage or seepage from abandoned coal mines threatening to destroy homes and businesses or block roads and stream channels.

(4) Potential failure of unstable coal refuse impoundments or abandoned sediment control structures caused by unusual precipitation events significantly imperiling downstream populated areas.

(5) Mine fires that impair the health or safety of residents in populated areas.

d. Abatement Procedures.

(1) Reclamation procedures are project specific and often cannot be determined or implemented until after on-site inspection and evaluation of the—

(a) Nature of the emergency,

(b) Number of people affected,

(c) Resources available, and

(d) Existing time constraints.

(2) Emergency reclamation procedures need not resemble final reclamation products. The objective of emergency reclamation is not to fully reclaim the area but to stabilize the problem and eliminate the danger to public health, safety, and welfare.

(3) The primary objective of emergency reclamation is to fully correct the emergency problem so that a reoccurrence of the problem is unlikely.

e. Coordination.

(1) OSM and the State or Indian reclamation agency should coordinate all efforts on emergency projects so that the assessment of the emergency situation and the determination of eligibility can be accomplished in an expeditious manner.

(2) Agencies that provide emergency services such as the fire department, police, utilities, ambulance, and Red Cross should be contacted to determine what services they have available and can commit in order to abate the emergency situation.

(3) If construction is necessary, local, State, and tribal agencies should be contacted to identify qualified contractors and/or technical experts that can provide immediate assistance to abate the emergency situation.

5. Remining or Secondary Recovery in Conjunction with Reclamation Activities

a. In the process of reclaiming land containing recoverable coal, the administering agency should make a determination as to whether the coal recovery activity is exempt from Title V regulations under provisions of Section 528 of the Act. If the determination is made that reclamation activities are not exempt from Title V, the administering agency should see that all permits required under this title are obtained before reclamation activities are carried out.

b. Prior to conducting reclamation activities on land containing coal refuse piles, coal waste impoundments, or abandoned mine workings the following activities should be accomplished by the administering agency:

(1) A written determination should be made as to whether coal within a refuse pile, impoundment, or abandoned working is economical to mine during the reclamation project. The primary purpose of reclamation should be to abate environmental harm.

(2) In making its determination, the administering agency should—

(a) Perform a mineral content analysis of the coal refuse or waste to enable determination of the economic feasibility of remining,

(b) Identify any coal preparation, washing, and loading operations located within reasonable proximity of the site,

(c) Consider the feasibility of re-entering the site to mine a seam of coal other than that which has been previously mined,

(d) Identify persons with the capability of performing any re-mining or other coal recovery operation believed to be feasible, and

(e) Make a written statement as to its findings on the potential for resource recovery and how this resource recovery can be incorporated into the reclamation project.

c. Many acceptable techniques for the reclamation of land containing coal refuse piles, coal waste impoundments, or abandoned mine workings are available. If the mineral estate under the area to be reclaimed contains other coal seams that are currently uneconomical to mine, reclamation activities should be carried out so that they do not preclude this coal from being mined in the future. Methods of reclaiming land containing coal refuse or waste and abandoned workings include—

(1) Removing the coal refuse or coal waste to an environmentally acceptable site;

(2) Burying the refuse or waste, layering the refuse material and sealing it with clay or other impervious material to prevent water infiltration and contamination, revegetating the disposal area, and diverting water from the reclaimed area;

(3) Treating the refuse pile in-place by—

(a) Diverting water around the coal refuse and/or waste,

(b) Collecting and conveying drainage from the refuse pile for disposition in an approved water pollution control facility,

(c) Treating the refuse with lime or using other material to prevent acid or other toxic drainage, or

(d) Any combination of the above treatments.

(4) Opening old underground mine workings to reclaim the area;

(5) Sealing underground mine entries to preclude polluted water discharges; or

(6) Other appropriate methods.

d. Where the refuse pile, impoundment, or abandoned mine working contains recoverable coal, the administering agency may recover the coal as set forth below:

(1) Coal may be temporarily stored on site for later sale and removal by the mineral owner within the time frame of the reclamation project,

(2) If authorized by the owner of the mineral estate, the contractor performing reclamation may remove and sell the coal, thereby reducing the cost of reclamation,

(3) After notice to the owner of the mineral rights, the reclamation contractor may be required to remove and sell the coal, placing the receipts in escrow for the mineral owner, with the contractor collecting an appropriate fee for coal removed, or

(4) Other appropriate combinations of processing, collection and royalty payments.

6. Abandoned Structures

a. Abandoned Structures and Equipment Investigation.

(1) The administering agency should perform an on-site investigation of the abandoned structures or equipment. The landowner and/or the owner of the structures or equipment should be contacted and offered the opportunity to participate in the investigation.

(2) Every effort should be made to encourage the recovery of any possible salvage value from the abandoned structures and equipment by disposing of it prior to the initiation of any reclamation project.

(3) The investigation should include the following—

(a) Record the type, quantity, and apparent condition of all abandoned structures or equipment.

(b) Consider the alternatives of having the structures or equipment remain on or be removed from the site.

(c) Consider the age, structural soundness, visual quality, historical significance, affect on existing and/or proposed reclamation activities, and land uses in the area.

(d) If removal of an abandoned structure is unnecessary, the soundness of the structure should be evaluated in relation to public health, safety, general welfare and the post-reclamation use. Evaluation of complex structures should be performed by a qualified expert who should provide written recommendations and cost estimates for any modifications needed to achieve the post-reclamation use.

B. Abandoned Structures and Equipment Report.

(1) After completion of the one-site investigation, a report should be prepared by the administering agency. The report should include—

(a) A description of the type, quantity, and condition of all abandoned structures or equipment on the site to be reclaimed;

(b) A discussion of the considerations relating to the disposal or retention of all abandoned structures or equipment;

(c) A discussion concerning the recommended methods of disposal of abandoned structures or equipment in accordance with local, State, tribal and Federal laws;

(d) A discussion concerning how the abandoned structures or equipment left on-site may affect other portions of the area to be reclaimed;

(e) If a determination is made to retain the structures or equipment, recommended methods should be included to preserve the structure or equipment. Structures abandoned after August 3, 1977, are not eligible for reclamation funding; and

(f) If a determination can made of the ownership of the abandoned structures or equipment, an analysis should be developed of the impact of the proposed reclamation activities on these owners.

c. Based on the investigation and report, the administering agency is responsible for determining the disposition of the abandoned structures or equipment.

7. Borrow and Disposal Areas

a. The borrow and disposal areas created by reclamation activities should be subject to and conducted in accordance with applicable local, State, tribal, or Federal reclamation requirements. Borrow and disposal areas should be located on the site of the reclamation project if possible. Off-site borrow and disposal areas should be utilized only when no on-site area is available and it is necessary to—

(1) Protect the health and safety of the public,

(2) Provide an area more suitable for reclamation and less prone to constitute a hazard in itself,

(3) Produce an improve land use, or

(4) Protect the environment.

b. Adverse impacts of the selected areas should be minimized by—

(1) Disturbing the smallest possible area;

(2) Providing adequate drainage, dust, and erosion control measures;

(3) Protecting visual esthetics;

(4) Protecting fish and wildlife values;

(5) Protecting the health and the safety of the community and the public; and

(6) Reclaiming the borrow and disposal area after termination of the project.

8. Experimental or Demonstration Practices

a. Experimental or demonstration practices, as authorized by Sections 403(4) and 405(f)(5) of the Act, should be considered only after review of other research efforts and "State of the Art" information reveals that the proposed experimental or demonstration practices have not been successfully demonstrated or proven in past reclamation efforts or previous research.

b. Coordination of experimental and demonstration practices with other State, tribal or Federal agencies interested in the practices is the responsibility of the administering agency.

c. The selection of an experimental or demonstration practice should be based on the following factors:

(1) The practice will be more cost-effective, or more effective in the overall abatement of the specific AML problem(s), than present practices.

(2) The result will meet environmental, health, and mine safety standards and other applicable State, tribal, and Federal laws.

(3) The practice has not been applied to the particular problem under similar conditions.

(4) The practice has a good probability of succeeding with minimum or no adverse effects to public health and safety or the environment.

(5) Anticipated construction time and monitoring period are of such reasonable length that the results will be useful during the life of the AML program.

(6) Proposed experimental or demonstration practices should have broad application so as to benefit reclamation techniques within the State and be of interest to other areas, States, Indian tribes or regions. Funding priority should be based on the benefits which could be derived, extent of applicability, and consistency with State and Indian Reclamation Programs, where applicable.

(7) The results of the practice will be consistent with existing and/or planned surrounding land uses.

(8) Thorough records of all experimental or demonstration type projects can be kept and results or consensus will be published and made available to interested parties.

(9) Emphasis should be given to those experimental and demonstration

practices which address high priority problems as specified in Sections 403(1) and 403(2) of the Act.

9. Program and Project Evaluation

a. General Evaluation Considerations—Title IV reclamation activities are to be evaluated on a continuing basis to determine the effectiveness of the program/project in reclaiming abandoned lands. Project evaluation measures the success or failure of the applied reclamation while program evaluation determines the effectiveness of the program, purposes, regulations, and procedures in achieving the objectives of the Act. Evaluation efforts include, but are not limited to, recording progress (accomplishments) and making onsite reviews before, during, and after reclamation.

b. Recording Requirements—The administering agency should be responsible for measuring, recording, and reporting the physical benefits of reclamation projects. Benefits recorded should include but are not limited to—

(1) Number of acres restored;

(2) Number of health or safety hazards eliminated;

(3) Population protected from subsidence, air pollution, mine fires, water pollution, or other hazards;

(4) Miles of stream improved or protected;

(5) Acres of fish or wildlife habitat restored; and

(6) Aesthetic value improved (acres).

c. Completed Reclamation Review.

(1) At least 5 percent but not less than 1 completed reclamation site under each program (Office of Surface Mining, State, Indian, and Rural Abandoned Mine Program) should be reviewed annually by the administering agency. This review should be carried out by persons who were not directly involved in the planning or installation of the site. The purpose of the review is to evaluate the effectiveness of the completed reclamation including the cost-effectiveness by type of reclamation. Questions to be addressed in the review should include:

(a) Were existing program policies and procedures followed?

(b) Were the objectives of the reclamation accomplished?

(c) Were the planned benefits actually obtained? If not, why?

(d) Does the completed reclamation meet contract or program specifications? Do the practices serve the intended purpose? and

(e) Are the completed reclamation activities adequately maintained?

(2) Each administering agency should utilize appropriate analytical procedures to estimate program efficiency and effectiveness.

(d) Monitoring—All reclamation activities should be monitored over time to document benefits or results. Sufficient monitoring of reclamation activities is required to insure that the success of the reclamation measures can be evaluated or compared to the planned benefits.

10. Maintenance of Reclamation Work

a. Reclamation should be done in a manner to minimize all maintenance.

b. Where continuing responsibility is unavoidable, maintenance requirements for a site should be identified and established during the planning and design stages. These requirements must be technically and economically feasible and should be developed in cooperation with the landowner(s) and/or appropriate agencies through formal agreement. Maintenance plans should include but are not limited to—

(1) Periodic maintenance requirements of the site;

(2) Establishment of a periodic inspection schedule by qualified personnel;

(3) Technical assistance to the landowner, as needed; and

(4) Funding for periodic maintenance (remedial work or applications for long-term vegetation solutions).

11. Noncoal Projects

a. Noncoal reclamation projects should be treated under these guidelines except for those applicable to Sections 403 (4), (5), and (6) of the Act.

b. Planning for reclamation of noncoal projects can commence prior to completion of reclamation of all coal projects.

c. Priorities given to noncoal projects shall be determined in the same manner as coal projects; however, reclamation may not proceed until coal problems have been resolved, except by special request of the Governor or Tribal Chairman, pursuant to section 409(c) of the Act.

12. Impact Assistance

a. Impact assistance should be for the purpose of alleviating the effects on communities impacted by coal development. Planning impact assistance can begin prior to physical completion of all coal and noncoal projects.

b. Funding assistance priorities for communities impacted by coal development should be determined according to the following sequence:

(1) *Priority A*—Areas suffering or expected to suffer housing shortages and inadequate public facilities and services as a result of coal mine development where such conditions are expected to pose a threat to the public health, safety and general welfare.

(2) *Priority B*—Repair, replace or enhance public facilities in communities where facilities have been adversely affected or are inadequate as a result of coal mine development.

c. Planning for impact assistance and coordination with other agencies should be implemented in accordance with local, State, tribal, and Federal requirements.

C. Site Considerations

1. Mine Drainage

a. The administering agency should consider the following factors in minimizing or controlling mine drainage and toxic materials:

(1) General considerations.

(a) Impounded waters containing toxic materials should be treated to minimize the environmental degradation that may result from the release of this impounded water during reclamation activities.

(b) Proven technology should be used to minimize or control mine drainage. At-source control measures are preferred over long-term treatment methods because it is a permanent solution that does not require continual maintenance costs.

(2) At-Source Control Measures.

(a) Mine sealing including grout curtains and slurry trenching. Factors to be considered are—

1 Mine sealing should not be considered where the potential exists to develop high hydrostatic heads.

2 Accessability of the area including any mine openings; and

3 Integrity of the surrounding geologic formations.

(b) Infiltration control and water diversion. Factors to be considered are—

1 Topography,

2 Control of surface water,

3 Effects on ground water, and

4 Control of water passage through openings.

(c) Daylighting—Factors to be considered are:

1 Depth of overburden; and

2 Marketability of mineral seam.

(3) Treatment Measures.

(a) Secondary treatment of mine drainage can be carried out by the addition of neutralizing agents. Permanent treatment facilities should be designed to minimize operation and maintenance costs and should only be considered if there is no other means to abate the mine drainage problems.

(b) If the administering agency determines that there is not other means

to abate the mine drainage problems and they elect to construct or continue to maintain existing facilities they should obtain written assurance that the treatment facilities will be maintained after appropriations for the abandoned mine land program ceases.

(c) Since tertiary treatment to control mine drainage problems and toxic materials is expensive, the only method that should be given serious consideration is neutralization.

2. Active Slides and Slide-Prone Areas

a. The administering agency has the responsibility to assure that the most feasible and current technology is used to reclaim (stabilize) slides or slide-prone areas. The selection process for reclamation work on slides or slide prone areas will follow the criteria contained in the Program Consideration guideline No. 3 (Selection Criteria).

b. Factors that should be considered in the evaluation of slides or slide-prone areas include but are not limited to—

(1) Topography.
(a) Contour map.
1 Land form.
2 Anomalous patterns (jumbled, scarps, bulges).
(b) Surface drainage.
1 Ponding of surface water (may be infiltrating into active slides, spoil material or other slide-prone areas).
2 Surface drainage into active slides.
(c) Profiles of slope (sketches).
1 Correlate with geology (Item (2) below).
2 Correlate with contour map (Item (1)(a) above).
(d) Note rate of topographic changes by time.
(2) Geology.
(a) Formations at site.
1 Sequence of formations.
2 Spoil.
a Texture.
b Soil rock ratios.
c Permeability.
d Engineering properties of spoil or rocks.
3 Soil characteristics.
b Structure.
1 Stratification.
2 Strike and dip of bedding or foliation.
a Changes in strike and dip.
b Relation to slope and slide.
3 Strike and dip of joints with relation to slope.
4 Faults.
(c) Weathering.
1 Depth.
2 Character (chemical, mechanical).
(3) Ground Water.
(a) Piezometric levels within slide.
1 Relation to surrounding slide.
2 Water pressure.
(b) Ground surface indications of subsurface water.
1 Springs.
2 Seeps and dump areas.
3 Adits.
4 Auger holes.
5 Drill holes.
(4) Slide monitoring for design information.
(5) Other factors.
(a) Timber coverage of/and removal from the original slope.
(b) Area, volume, and thickness of spoil materials.
(c) Parent material of spoil.
(d) Fragmentation (size and shape) of spoil materials.
(e) Proximity to other slides.
(6) Vegetative cover.
(a) Percent of vegetative cover.
(b) Nature of root system.
(7) Human disturbances not related to mining.
(a) Undercutting of toe.
(b) Undercutting of the dip slope.
(c) Upslope disturbances.
(d) Existing structures and utility lines.
(8) U.S. Geological Survey slide-prone maps, U.S. Department of Agriculture soil maps, and other related data.

c. Reclamation and stabilization may be obtained by use of mechanical strengthening, changing shape and/or angle of slope, and dewatering or removing the slide material. Consideration on a site specific basis should be given but not limited to the following measures:

(1) Mechanical strengthening.
(a) Pilings (driven vertically).
(b) Restraining structures.
(c) Buttresses.
(d) Berms.
(e) Gabions.
(f) Other retaining walls.
(g) Vibration stabilization.
(h) Compaction.
(2) Changing shape of slope by reshaping.
(a) Terracing.
(b) Slope reduction.
(c) Removing all or part of slide material.
(3) Dewatering.
(a) Diversion of surface waters.
(b) Internal drainage.
1 Horizontal drains.
a Perforated pipes.
b Driven adits.
2 French type drainage systems.
3 Diverting water from underground works—daylighting.
4 Drilled wells.
5 Electrokenetic stabilization.
(c) Revegetation (evapo-transportation).

3. Erosion and Sedimentation

a. The administering agency should consider the following objectives relative to controlling erosion and sediment in their reclamation planning efforts:

(1) Erosion and sediment control measures should be designed to—
(a) Reduce erosion rates to allowable levels;
(b) Reduce water pollution from sediment, acid drainage, and other toxic materials to acceptable levels;
(c) Stabilize mined lands and spoil piles;
(d) Protect water resources; and
(e) Provide conditions suitable for the planned land use.
(2) Reclamation should include adequate treatment and management to maintain the soil resource within soil loss limits. Additional treatment may be necessary to improve the quality of the environment so as to minimize environmental degradation.
(3) Allowable sheet and rill erosion rates should be related to the properties of the reconstructed soil resulting from reclamation. Information relative to allowable soil loss limits may be obtained from local USDA, Soil Conservation Service Offices.
(4) Land disturbing activities should be planned well in advance to—
(a) Expose the least amount of land at one time,
(b) Expose the more hazardous areas for the shortest time and during the season when extreme rainfall is least likely to occur,
(c) Complete activities so revegetation can take place at the most advantageous time of year,
(d) Control foot and vehicular traffic until vegetation is established, and
(e) Schedule permanent practice installation to provide for minimum maintenance in accordance with the needs of the specific site.

b. Erosion Control Practices.
(1) Vegetation.
(a) Temporary vegetation should be used to provide protection during a delay in construction activities, to protect stockpiles of soil materials for a short time, or to provide temporary cover until conditions are right to establish permanent vegetation. Temporary vegetation may be used alone or in combination with a mulch in accordance with the needs of the site.
(b) Permanent vegetation should be established as soon as final grading is complete. Locally adapted species and procedures should be used. The species should be appropriate for soil conditions, climate, treatment, nutrient maintenance, and planned land use. Soil

amendments should be included and provisions made for additional nutrient placement to insure a successful ground cover. Mulches should be used where necessary to obtain adequate cover for stabilization and provide protection during establishment.

(2) Mulches may also be used for temporary erosion control, and in some cases, mulches such as gravel, stone, and concrete blocks may be used for permanent protection. Mulching materials may include, but are not limited to, straw, hay, wood chips, bark, shells, hulls, stone, jute mesh, synthetic fabrics and materials, plastic netting, and asphalt materials.

(3) In many cases, a combination of vegetation and structural measures are needed for adequate erosion control. Structural measures are used to divert foreign runoff, reduce slope length, and to provide for an effective runoff disposal system. Some of the more common practices used include, but are not limited to, diversions, terraces, grassed and lined waterways, underground outlets, subsurface drains and grade stabilization structures.

(4) If temporary structural measures are needed for erosion protection during establishment of permanent practices, especially vegetation, temporary terraces and outlets may be used. Provisions should be made to remove the temporary measures and stabilize the area when they are no longer needed.

c. Sediment Trapping Practices.

(1) If it is impractical to achieve the desired reduction in sediment yield by erosion control practices, either during the establishment period or permanently, sediment control practices should be used to achieve the desired results.

(2) Sediment control measures include, but are not limited to, measures such as filter strips, sediment traps and sediment basins. These measures should be stabilized and maintained during their planned life.

(3) Permanent sediment basins should be maintained and the sediment removed promptly when it accumulates to the design level. Sediment removed should be disposed of in a manner that prevents environmental degradation. The use of permanent sediment basins should be minimized because of the continuing maintenance responsibility.

4. Vegetation

a. The administering agency should complete an inventory and evaluation of existing vegetation and site conditions prior to developing the Reclamation Plan. Land use determinations should be made after consideration of various alternatives. Wherever possible, multiple land uses should be adopted and become a part of the plan. The permanent vegetation selected to cover the reclaimed mine land should—

(1) Be compatible with the site characteristics and the intended land use of the reclaimed land and surrounding land use, and

(2) Provide adequate soil cover to control erosion along with other supporting practices.

b. Developing the Vegetation Portion of the Reclamation Plan.

(1) In areas where only a change in vegetation is needed, the topography and soil should be suitable for establishment of vegetation. A change in plant species may be required due to inadequate or undesirable vegetation.

(a) The planned vegetation should be compatible with the chosen land use.

1 Vegetative protection should be established as expediently as practical. Temporary vegetation should be used on highly erosive areas until permanent vegetation can be planted. Temporary vegetation should consist of an easily established fastgrowing grass-type annual.

2 The permanent species selected should be adapted to the site and be compatible with the planned land use.

3 The establishment and maintenance of vegetation should be in accordance with locally accepted and adopted technology.

(b) Erosion and sediment control structures should be installed as necessary to protect the area from excessve erosion and sedimentation during the vegetation establishment period.

(c) Vegetation-management practices should be applied to insure a permanent stand of vegetation to meet the objectives of the planned land use and control erosion.

(d) During the establishment period, the newly planted area should be protected from excessive use, especially livestock grazing.

(2) In areas where changes in topography and vegetation are needed—

(a) Changes in topography should be made to improve aesthetic aspects of the site, permit establishment of desirable vegetative cover, and make the topography compatible with the planned land use;

(b) Existing vegetation should be selectively destroyed when necessary; and

(c) Permanent vegetation should be established in accordance with 4.b.(1) above.

(3) In areas where the present spoil material is unsuited for vegetation because of unfavorable soil conditions—

(a) Spoil material should be covered or replaced with material that will support the desired vegetation,

(b) Permanent vegetation should be established in accordance with 4.b.(1) above.

(c) Where altering the site to support vegetation is impractical—

1 Confine runoff and sediment to the immediate area, or

2 Intercept and treat the sediment and runoff to an acceptable level of quality before discharging off-site.

5. Toxic Materials

a. The administering agency should consider the following items in the identification, handling, and disposal of toxic materials:

(1) Spoil materials.

(a) Sampling and analysis.

1 Sampling—Where data are insufficient or nonexistent for spoil, characterization of toxic materials by the use of vertical core samples or other suitable deep-sampling procedures should be undertaken.

2 Analysis—The following chemical and physical analyses should be considered. These analyses should use acceptable analytical procedures:

a pH (paste).

b SMP Buffer (test pH of solution prior to weathering).

c Net acidity or alkalinity, or potential acidity.

d Total sulfur (sulfate and sulfite).

e Electrical conductivity (mmhos/cm).

f N,K,P and USDA texture class when material is to be used as postmining plant growth media.

g Other analyses—When extreme pH values are encountered, i.e., pH 5.5 or less and 8.5 or greater, other analyses may be required (e.g., Na, Mg, Ca, various trace elements)

pH 5.5 or less—Possible Parameters:
Available and Total
Fe
Mn
Al
Cr
Cu
Pb
Zn
Ni
Co

pH 8.5 or greater—Possible Parameters:
SAR Value
B
Se
Mo

h Visual and/or microscopic identification of potential toxic forming minerals.

3 Development of critical toxic element limits.

a The administering agency should consult with agencies that have

responsibility for establishing toxic levels and consider these limits in their reclamation planning efforts.

(b) The administering agency should consider the following items in their planning efforts relative to projects containing toxic materials:

1 Site preparation.

a Containment—segregation of toxic materials.

b Grading and backfilling.

c Scarification.

d Utilizing appropriate growing medium—actual topsoil vs. suitable overburden material.

e Selecting soil amendments—Including, but not limited to, chemical fertilizers, lime, gypsum, mulches, and sludge.

2 Runoff water management.

a Sediment control.

b Soluble toxic element control.

c Water management control.

3 Vegetation (per Site Consideration guideline No. 4).

4 Designate needed monitoring and maintenance.

(2) Refuse piles.

(a) Sampling (Same as parameters used for spoil, (1)(a) *1* above).

2 Analysis (Same as parameters used for spoil-(1)(a) *2* above).

3 Criteria of critical toxic element limits (Same as parameters used for spoil, (1)(a) *3* above).

(b) The administering agency should consider the following items in their planning efforts relative to projects containing refuse piles:

1 Grading and reshaping.

2 Refuse isolation.

a Seal with compacted clay and other suitable material.

b Cover with suitable growing medium.

c Placement of refuse in sealed pits or embankments.

3 Refuse removal from stream channels.

4 Runoff water management.

5 Treatment of growing medium with soil amendments.

6 Designate needed monitoring and maintenance.

6. Hydrologic Balance

a. The administering agency, responsible for the program or project, should consider the following factors related to the restoration of the hydrologic balance:

(1) Planning considerations.

(a) Type of restoration needed for the hydrologic balance should be evaluated considering technical and economical constraints.

(b) Areas needing restoration should be identified.

(c) The relationship of anticipated restoration activities to the off-site hydrologic system should be investigated.

(d) All applicable local, State, tribal, or Federal requirements should be incorporated into the reclamation plan.

(e) Post-reclamation land-use of the site and land-use of the surrounding area should be considered in the planning process.

(2) Surface water considerations.

(a) Restoration and protection of surface drainage—

1 Should insure erosional and ecological stability considering but not limited to stream gradient, fish and wildlife habitat, longitudinal profile, and type of reconstruction materials.

2 Should insure compatibility with geomorphic and ecologic characteristics of adjoining undisturbed surface drainage.

3 Should be utilized, as appropriate, as a source of ground water recharge.

4 Should insure that downstream flooding is minimized.

(b) The reconstructed flood plain should be stable considering all relevant factors including the geomorphic and vegetative characteristics of the area.

(c) Overland flow drainage systems should be reclaimed so as to be compatible with both the longitudinal profile of the drainage area and the receiving stream characteristics.

(d) Where the above cannot be achieved, consideration should be given to long-term, self-maintaining erosion control measures which will enhance stream and flood plain stability.

(3) Groundwater considerations.

(a) The relationship of the re-established water table to the reclaimed land surface should be evaluated.

(b) The desirability for recharging groundwater should be evaluated considering the underlying aquifers, backfill materials and the presence of acid and toxic materials.

(c) Unsuitable material should be identified and isolated between impervious layers of earth so as not to contaminate the re-established water table.

(d) Restoration of groundwater included as part of the reclamation plan should not diminish or degrade water leaving the site that may affect downstream water users.

(e) Water impoundments should be designed and constructed in accordance with applicable local, State, tribal, or Federal requirements and should not adversely affect the restoration of the hydrologic balance.

7. Public Health and Safety

a. Insect/Vermin Vectors.

(1) Garbage, debris, or other wastes disposed of in abandoned mine sites ("dumps") in close proximity to residences pose a health hazard from flies, rats, and other disease vectors. Prior to reclamation of these "dumps", consideration should be given to the following factors:

(a) Unsanitary "dumps" on abandoned mine sites should be evaluated as secondary effects of past mining practices.

(b) The presence of a dump on an abandoned mine site should not be considered as the primary public health or safety criteria for which reclamation is proposed.

(c) Those sites with dumps may receive earlier funding than other projects in the same priority classification.

(2) Prior to any reclamation work on "dumps" located on abandoned mine sites, the local, State and/or Tribal agency should be contacted for proper disposal techniques and encouraged to abate the problem under other existing authorities.

b. Highwall Danger.

(1) Highwall characteristics that create a significant danger to public health or safety might include—

(a) Sloughing or slipping to cause significant harm to residences or business or blocking roads and stream channels, or

(b) Locations where public use of the area above the highwall poses physical danger.

(2) Appropriate reclamation techniques to control public health and safety problems associated with highwalls that should be considered include—

(a) Reducing the highwall,

(b) Backfilling and grading the highwall to a safe and stable slope, or

(c) Providing an appropriate physical barrier to limit accessibility.

c. Mine Openings and Subsidence.

(1) The administering agency should consider the following items when planning for subsidence control projects:

(a) Exploratory drilling to determine the extent of potential subsidence should be accomplished prior to all subsidence work (except in emergencies),

(b) Preference should be given to conducting subsidence control in populated areas or rural areas with high public use.

(c) Identification of potential subsidence areas should be made available to all local, State, and tribal land use planning agencies.

(2) Restricting entry to mine openings should be accomplished by physical barriers. For emergencies, fencing may

be appropriate to immediately alleviate the danger to public health and safety.

(3) Only proven technology for subsidence and mine opening control should be employed.

d. Radiation Emission—Where radiation might be a potential public health or safety problem, the primary consideration should be to assure proper coordination with other agencies concerned with radioactive waste management prior to reclamation activity. At a minimum the following agencies should be consulted; U.S. Environmental Protection Agency, Nuclear Regulatory Commission, National Council on Radiation Protection, State Nuclear Regulatory Agency (if any), State Health Department, and Tribal Environmental Office (if any).

e. Domestic Water Supplies.

(1) Specific reclamation control measures designed to protect or restore domestic water supplies are site specific in nature. Control strategies are dependent on a variety of variables including but not limited to—

(a) The number of people affected,
(b) The type of pollutant(s),
(c) The concentration of pollutant(s),
(d) The technology available to control the pollution, and
(e) The cost to control the pollution.

(2) If at all possible, expenditure of Title IV funds to clean-up or restore domestic water supplies should be restricted to at-source control methodologies.

f. Surface and Underground Mine Fires.

(1) Only fires associated with abandoned mines can be controlled or extinguished with funds within the context of Title IV of the Act. Virgin coal outcrop fires cannot be addressed.

(2) Prior to initiating extinghishment efforts, geologic investigations should be carried out to determine the amount of remaining combustible material and to delineate the extent of the existing fire.

g. Hazardous Gases and Particulates.

(1) The introduction of toxic gases such as CO, CO_4, CH_4, SO_2, H_2S, NH_3, HC and particulates can adversely affect health, visibility, and inhibit plant growth.

(2) Specific control procedures will vary with the site. Treatment measures should take into consideration local physiographic and atmospheric conditions.

(3) The expertise and data that can be provided by local, State, and tribal air pollution control agencies should be considered.

(4) Only proven technology for controlling hazardous gases and particulates resulting from past mining practices should be employed.

8. Aesthetic and Visual Values

a. The administering agency should conduct an aesthetic evaluation which should include but not be limited to—

(1) The adversity and/or desirability of the visual impact; the components of this evaluation include—
(a) Viewing distance,
(b) Disparity of land forms,
(c) Disparity of textures, and
(d) Color contrasts— seasonal variations.

(2) The viewing audience; this includes—
(a) Number of observers, and
(b) Nature of viewing audience and their expectations.

(3) Proximity to public facilities and other high use areas; this includes—
(a) Transportation facilities,
(b) Parks and recreation areas,
(c) Public forests,
(d) Urban areas, and
(e) Tourist attractions.

b. Reclamation activities should include landscaping techniques to visually improve the project area and should address the following visual degraders:
(1) Highwalls,
(2) Bare, eroding soils/spoil,
(3) Discolored water,
(4) Haul roads,
(5) Off-site sedimentation,
(6) Deep mine openings,
(7) Refuse piles,
(8) Abandoned structures,
(9) Slurry ponds and sediment basins,
(10) Stockpile areas,
(11) Abandoned mining equipment and debris,
(12) Garbage and refuse dumps,
(13) Open pits, and
(14) Deforestation.

c. Most solutions for aesthetic problems should involve movement of material and the planting of vegetation. The strategic placement of screening materials and vegetation and the determination of which plant species have the necessary combinations of form, texture, color, size, and adaptability to the growing conditions will be a key step in the reclamation planning. Guidelines and standards to evaluate visual resources have been developed by agencies, including the U.S. Forest Service, U.S. Soil Conservation Service, U.S. Bureau of Land Management, National Park Service and the Heritage Conservation and Recreation Service, and may be adapted for use in evaluating and planning visual solutions on abandoned mine land projects. Some solutions for aesthetic problems may include—

(1) Revegetation with screening trees and shrubs, herbaceous plants, and combinations thereof;
(2) Off-site screening;
(3) Reduction and/or reshaping of outslopes;
(4) Stream restoration;
(5) Disposal of abandoned mining and processing equipment and debris; and
(6) Reshaping and revegetation of bare eroded areas.

9. Fish and Wildlife Values

a. The administering agency should review information provided by the conservation and land management agencies having responsibilities for fish and wildlife or their habitats to determine the pre-reclamation fish and wildlife values of each abandoned mine land project. The administering agency should then determine the fish and wildlife values for each project.

b. The administering agency should incorporate fish and wildlife values into project reclamation plans, where appropriate.

c. The selected reclamation plan should be discussed with the landowners/or users before reclamation begins.

d. The administering agency should insure that all fish and wildlife measures contained in the selected plan are implemented and encourage the landowner(s) to maintain them at or above the planned fish and wildlife values.

10. Air Quality

a. All reclamation activities should be conducted in accordance with applicable local, State, tribal, or Federal air quality standards.

b. Local, State, tribal, or Federal air quality officials should be contacted prior to reclamation planning activities for requirements concerning air quality permit procedures, applicable standards, and possible control measures.

c. Long-term air quality improvements which will result from reclamation should have priority over possible short-term air quality degradation caused by reclamation construction.

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Federal Register

Tuesday
November 6, 1979

Part VII

Environmental Protection Agency

Extension of Compliance Date for Emission Standards Applicable to JT3D Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[FRL 1323-1]

Control of Air Pollution From Aircraft and Aircraft Engines; Extension of Compliance Date for Emission Standards Applicable to JT3D Engines

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action amends 40 CFR 87.31(c) to extend the final compliance date for smoke emission standards applicable to the JT3D aircraft engines from September 1, 1981 to January 1, 1985. This compliance schedule is compatible with the FAA noise operating rule applicable to most aircraft using the JT3D engine that are not flown in foreign commerce (14 CFR Part 91). The proposed amendment to 40 CFR 87.31(c) was published as a Notice of Proposed Rulemaking on March 24, 1978 (43 FR 12815).

EFFECTIVE DATE: January 7, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Munt, Emission Control Technology Division, Office of Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668-4378.

SUPPLEMENTARY INFORMATION: On July 17, 1973, the Environmental Protection Agency (EPA) promulgated 40 CFR Part 87 establishing aircraft emission standards and test procedures (38 FR 19088). One provision of Part 87 is § 87.31(c), which is applicable to exhaust emissions of smoke from JT3D engines (Class T3). This provision was originally scheduled to take effect January 1, 1978.

On September 5, 1974, the Air Transport Association of America (ATA) submitted a petition to the EPA on behalf of 11 member airlines asking that the implementation date for this requirement be set back to March 1, 1981, and proposed that each operator of class T3 engines (class T3 engines, designated JT3D by the manufacturer, are those that are used principally on Boeing 707 and McDonnell-Douglas DC-8 aircraft) accomplish the necessary engine modifications in accordance with a plan approved by the EPA Administrator. This petition was based upon the need to respond to the anticipated delay in the availability of hardware as a consequence of technical problems encountered by the manufacturer, Pratt and Whitney, during the initial service evaluation.

In response to this petition, EPA promulgated a revision to the aircraft standards in December 1976 (42 FR 54861) permitting a phased compliance schedule, culminating in complete compliance by September 1, 1981.

In 1977, during the interagency review of the draft NPRM for a comprehensive revision of all aspects of the aircraft standards, it was suggested by the FAA that JT3D-powered aircraft, which are scheduled to be replaced as a part of the FAA noise reduction program be exempted from compliance with the smoke standards for JT3D engines (40 CFR 87.31(c)). This suggestion was incorporated in the NPRM published on March 24, 1978 (43 FR 12815). Without such an exemption, the airlines would be burdened with a costly modification program ($21 million total cost) by September 1981, only to have those engines replaced three years later in order to comply with the FAA noise rule. Specifically, the NPRM proposed a compliance schedule for smoke control identical to that required for compliance with the FAA noise rule by airplanes operated under FAR Parts 121 and 135 which are not operated in foreign commerce. It should be noted that airplanes operated under FAR Part 91 and those operated in foreign commerce would be covered by the same proposed schedule. This would result in the retrofit or replacement of all JT3D engines for smoke control by January 1, 1985, while all JT3D-powered airplanes not in foreign commerce would be in compliance with the noise requirements by that date.

Comments favorable to this proposed delay were received from the Air Transport Association and the International Air Transport Association (IATA). However, these organizations, as well as the European Civil Aviation Conference (ECAC), did express a preference that the rule be dropped altogether in agreement with the format of the proposed rules of the International Civil Aviation Organization (ICAO) which excludes any and all retrofit rules. The IATA and ECAC also voiced the opinion that the rule should not apply to foreign aircraft operating in the U.S. The issue, though, is whether to delay the smoke rule and not whether to have the rule: It is already promulgated.

The EPA is proceeding now with final rulemaking in order to provide guidance to the operators of JT3D-powered aircraft in this matter while other aspects of the March 1978 NPRM are still under review.

The primary effect of this action is to postpone for three years the elimination of visible smoke from most Boeing B707, B720 and McDonnell-Douglas DC-8 aircraft. At the end of that time, either the engines will have been modified for smoke and noise reductions, replaced by other engines which would meet both EPA smoke standards and FAA noise standards, or the entire aircraft will have been replaced by newer aircraft meeting the smoke and noise standards. Thus, the final effect is unchanged. The delay does not have serious consequences insofar as visible smoke is concerned, for by 1985 the B707 and DC-8 aircraft will have dropped from 20 percent of the fleet today, to only 7 percent. Such aircraft would then account for less than 5 percent of the total takeoffs (when visible smoke emissions are most troublesome), because they are used for long range flight and undergo fewer landing-takeoff cycles.

This revision may provide considerable savings in cost to the airlines. The cost for a retrofit of the entire 1981 fleet of JT3D-powered aircraft is estimated to be $21 million which would be totally lost by 1985 if, as is most likely, all affected aircraft are either retired or re-engined from compliance with the FAA noise rule.

Postponement of this smoke rule will add to the hydrocarbon and carbon monoxide burden imposed on the air quality regions surrounding major airports. This additional burden occurs because the low-smoke combustors which would be installed also reduce the emissions of those gaseous pollutants, especially during taxiing and idling of the aircraft at the airport. The delay, then, will result in the continued use of the higher-polluting combustors (of hydrocarbons and carbon monoxide) for an additional 3 years and 4 months. This effect is short term, however, as the engines will either be modified or replaced by 1985 (most likely the latter as fuel efficient replacement engines make this an attractive alternative). The additional national emissions that will result from the delay have been estimated to be 17,000 and 5,300 tons per year for hydrocarbons and carbon monoxide, respectively (assuming engine modification, not replacement). On the other hand, the eventual replacement of these engines by newer ones meeting the EPA gaseous emission standards will result in a large emission savings, roughly 30,000 and 20,000 tons per year for hydrocarbons and carbon monoxide, respectively.

Delay in the full compliance with the noise rule beyond January 1, 1985 will

not be considered a sufficient reason for the further delay in the smoke retrofit schedule because a certifiable hardware design and ample time for retrofit are both available.

The contents of this rulemaking have been coordinated with the Secretary of Transportation in order to assure appropriate consideration of aircraft safety. There will be continuing consultation on this issue between this Agency and that Department until full compliance is achieved. Should the Secretary of Transportation determine at any point that the emission standard cannot be met within the specified time without creating a safety hazard, appropriate modifications will be made to the standard or its effective date.

Availability of Documents

Copies of EPA's Summary and Analysis of Comments to the NPRM and supporting documentation are available for inspection and copying at the U.S. Environmental Protection Agency, Central Docket Section, Room 2903 (Docket No. OMSAPC-78-1), 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Dated: October 30, 1979.

Douglas M. Costle,

Adminstrator, Environmental Protection Agency.

Part 87, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 87.31(c) is revised to read as follows:

§ 87.31 Standards of exhaust emissions.

* * * * *

(c) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class T3 shall not exceed a smoke number of 25. Each operator shall achieve compliance in accordance with the following schedule:

(1) One quarter of its operational Class T3 engines by January 1, 1981.

(2) One half of its operational Class T3 engines by January 1, 1983.

(3) All of its operational Class T3 engines by January 1, 1985.

This compliance schedule notwithstanding, Class T3 engines which do not meet a smoke number of 25 may continue to be operated if, under an FAA approved plan, replacement engines or replacement airplanes have been ordered and are scheduled for delivery prior to January 1, 1985, but not after the dates specified in the plan. For the purpose of this paragraph, replacement engines are engines of a class different from Class T3 and have been shown to meet the smoke emission standards in this part appropriate to their class.

(Secs. 231, 301(a), Clean Air Act, as amended (42 U.S.C. 7571, 7601(a)))

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Tuesday
November 6, 1979

Part VIII

Department of Energy

Contract Appeals; Rules of Practice; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 1023

Contract Appeals; Rules of Practice; Final Rule

AGENCY: Department of Energy, Board of Contract Appeals.

ACTION: Rules of practice. Final rule.

SUMMARY: These regulations revise the rules of practice of the Department of Energy Board of Contract Appeals. They reflect new procedures required by the Contract Disputes Act of 1978, Pub. L. 95–563, 92 Stat. 2383, 1978 (41 U.S.C. 601). The revised rules also incorporate substantial portions of the Uniform Rules of Procedures for Boards of Contract Appeals issued as guidelines by the Office of Federal Procurement Policy on May 31, 1979 (44 FR 34227, June 14, 1979). In addition, these rules reflect the comments received to the Supplemental Interim Rules of Practice for the Board issued and published for comments on Friday, August 17 at 44 FR 48163.

EFFECTIVE DATE: October 17, 1979.

FOR FURTHER INFORMATION CONTACT: John B. Farmakides, Chairman, Energy Board of Contract Appeals, Webb Bldg., Room 1006, 4040 North Fairfax Drive, Arlington, VA 22203. Telephone 703–235–2700.

SUPPLEMENTARY INFORMATION: These regulations are intended to provide rules and procedures for contract appeals filed pursuant to the Contract Disputes Act of 1978 (Act), or, where pursuant to that Act, an appellant elects the option to proceed in accordance with the Act. These rules do not replace or supersede the rules of practice and procedure set out at 41 FR 12215 issued on March 24, 1976 (10 CFR Part 703) which will continue to be used in appeals involving contracts for which an election under the Act is not available, or is not made.

These revised rules substantially incorporate the guidelines issued by the Office of Federal Procurement Policy (OFPP), except that the Board has continued some of its earlier rules, where, based on past favorable experience they are simpler, easier to understand, and are consistent with the intent for impartial, and timely resolution of appeals under the Act. Those areas of change were noted in detail in the earlier publication of the interim rules for public comment at 44 FR 48163 (August 17, 1979), and will not be repeated here except to note that the comments received were heavily in favor of the Board's proposed rules. The majority of comments received related to Rule 4 and voiced support for that Rule as proposed by the Board. Therefore, the requirement in the OFPP's guidelines calling for the "appeal file" to be placed automatically into evidence subject to right of appellant to object is not followed. Instead, under the Board's Rule 4 the preparation of the appeal file is treated in the same manner as provided by OFPP except that, in accordance with the Federal Rules of Evidence, it does not become part of the evidentiary record until offered and admitted into evidence. Also consistent with past favorable experience, the limiting dates for submitting pleadings under Rule 7 are revised to run from the date notice is received that an appeal has been docketed.

DRAFTING INFORMATION: The principal persons involved in drafting these regulations are: John B. Farmakides, Chairman; Carlos R. Garza, Vice Chairman; and Beryl S. Gilmore, Member, Department of Energy, Board of Contract Appeals.

Issued in Washington, D.C., on October 29, 1979.

John B. Farmakides,

Chairman, Board of Contract Appeals.

Accordingly, in 10 CFR, new Part 1023 is revised to read as follows:

PART 1023—CONTRACT APPEALS

Subpart A—Rules of the Board of Contract Appeals

Preface

Sec.

Authority: Pub. L. 95–91, sec. 301, 91 Stat. 577; Pub. L. 95–563; EO 10789.

Subpart A—Rules of the Board of Contract Appeals

Preface

§ 1023.1 Scope and purpose.

These rules are intended to govern all appeals procedures before the Department of Energy Board of Contract Appeals (Board) which are within the coverage of the Contract Disputes Act of 1978 (Pub. L. 95–563, Nov. 1, 1978).

§ 1023.2 Effective date.

These rules shall apply to all appeals relating to contracts which are subject to the Contract Disputes Act of 1978 and entered into on or after March 1, 1979. At the contractor's election, they shall also apply to appeals relating to earlier contracts, if such contracts are subject to the Contract Disputes Act of 1978, and the appeal relates to claims pending before the contracting officer on March 1, 1979.

§ 1023.3 Jurisdiction for considering appeals.

(a) The Department of Energy Board of Contract Appeals (referred to herein as the "Board" or "EBCA") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613, also hereinafter referred to as the "Act") relating to contracts made by (1) the Department of Energy or (2) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. In addition, the Board shall consider and determine appeals from decisions of contracting officers arising from other contracts which include an appropriate disputes clause.

(b) The Board may consider and determine other matters, not inconsistent with its statutory duties, as assigned by the Secretary.

(c) In each proceeding the Board shall make a final decision which is impartial, fair and just to the parties based on the record of the case.

§ 1023.4 Organization and location of the Board.

(a) The Board is located in the Washington, D.C. metropolitan area and its address is: Webb Building, Room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203.

(b) The Board consists of a Chair, a Vice Chair, and other members, all of whom are attorneys-at-law duly licensed by any state, commonwealth, territory, or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as hearing examiners pursuant to Section 3105 of title 5, United States Code with an additional requirement that each member shall have had not fewer than five years experience in public contract law. Members are designated Administrative Judges and the Chair, Chief Administrative Judge.

(c) The Administrative Judge assigned to hear and develop the record on an appeal has authority to act for the Board in all matters with respect to such appeal that are not dispositive of the appeal.

(d) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three

Administrative Judges of the Board who decide the case by a majority vote.

§ 1023.5 Ex-parte conduct.

Written or oral communications with the Board by or for one party without participation or notice to the other, is not permitted. No member of the Board or of the Board's staff shall consider nor shall any person, directly or indirectly involved in an appeal, submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to communications concerning the Board's administrative functions or procedures.

§ 1023.6 General guidelines.

(a) It is impractical to articulate a rule to fit every circumstance which may be encountered. Accordingly, these rules will be interpreted and applied consistent with the Board's policy to provide for the just, speedy, and inexpensive determination of appeals.

(b) It is the Board's objective to encourage full disclosure of all relevant facts and to discourage surprise.

(c) Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. Informal communication between the parties is encouraged to reduce time periods as much as possible.

(d) The Board shall conduct proceedings so as to assure compliance with the security regulations and requirements of the Department or agency involved.

§ 1023.20 Rules of practice.

The following rules of practice shall govern the procedure as to all contract disputes appealed to this Board in accordance with this subpart:

Preliminary Procedures

Rule

1 Appeals, how taken.
2 Notice of appeal, contents.
3 Docketing of appeals.
4 Contracting officer appeal file.
5 Motions.
6 Appellants election of procedure.
7 Pleadings.
8 Amendments of pleadings or record.
9 Hearing election.
10 Submission of appeal without a hearing.
11 Prehearing briefs.
12 Prehearing conference.
13 Optional Small Claims (Expedited) procedure.
14 Optional Accelerated procedure.
15 Settling the record.
16 Discovery—General.
17 Discovery—Depositions, interrogatories, admissions, production and inspection.
18 Subpoenas.
19 Time and service of papers.

Hearings

20 Hearings—Time and place.
21 Hearings—Notice.
22 Hearings—Unexcused absence of a party.
23 Hearings—Rules of evidence and examination of witnesses.

Representation

24 Appellant.
25 Respondent.

Decisions

26 Decisions.
27 Motion for reconsideration.
28 Remand from court.

Dismissals

29 Dismissals without prejudice.
30 Dismissal for failure to prosecute.

Sanctions

31 Failure to obey Board order.

Preliminary Procedures

Rule 1 Appeals, How Taken. (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished at the same time to the contracting officer from whose descision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and where the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) of this Rule, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board, or order the appeal to proceed without the contracting officer's decision.

Rule 2 Notice of Appeal, Contents. A notice of appeal must indicate that an appeal is being taken and must identify the contract (by number), and the department, administration, agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3 Docketing of Appeals. When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice of docketing shall be mailed promptly to all parties (with a copy of these rules to appellant).

Rule 4 Contracting Officer Appeal File. (a) Composition: Within 30 days after receipt of notice that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board one copy of the appeal file with an additional copy each to appellant (except that items 1 and 2, below, need not be retransmitted to the appellant) and to attorney for respondent. The appeal file shall consist of all documents pertinent to the appeal, including:

(1) The contracting officer's decision and findings of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) Organization: Documents in the appeal file may be originals, legible facsimiles, or anthenticated copies. They shall be arranged in chronological order, where practicable, and indexed to identify readily the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(c) Supplements: Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to attorney for respondent.

(d) Burdensome documents. The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) Status of Documents: Documents in the appeal file or supplements thereto shall become part of the historical record but shall not be included in the record upon which the Board's decision will be rendered unless each individual document has been offered and admitted into evidence.

Rule 5 *Motions.* (a) Any timely motion may be considered by the Board. Motions shall be in writing (unless made during a conference or a hearing), shall indicate the relief or order sought, and shall state with particularity the grounds therefore. Those motions which would dispose of a case shall

be filed promptly and shall be supported by a brief. The Board may, on its own motion initiate any motion by notice to the parties.

(b) Parties may respond to a dispositive motion within 20 days of receipt, or as otherwise ordered by the Board. Answering material to all other motions may be filed within 10 days after receipt. Replies to responses ordinarily will not be allowed.

(c) Board rules relating to pleadings, service and number of copies shall apply to all motions. In its discretion, the Board may permit a hearing on a motion, and may require presentation of briefs, or it may defer a decision pending hearing on both the motion and the merits.

Rule 6 *Appellants election of procedures.* (a) The election to use Small Claims (Expedited) (Rule 13) or Accelerated (Rule 14) procedures is available only to appellant. The election shall be filed with the Board in writing no later than 30 days after receipt of notice that the appeal has been docketed, unless otherwise allowed by the Board.

(b) Where the amount in dispute is $50,000 or less, appellant may elect to use the Accelerated procedures. Where the amount is $10,000 or less, appellant may elect to use the Small Claims (Expedited) or the Accelerated procedures. Any question regarding the amount in dispute shall be determined by the Board.

Rule 7 *Pleadings.* (a) *Complaint.* Within 30 days after receipt of notice that the appeal has been docketed, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. A copy of the complaint shall be served upon the attorney for the respondent or, if the identity of the latter is not known, upon the General Counsel, Department of Energy, Forrestal Building, Washington, D.C. 20585. If the complaint is not filed within 30 days and in the opinion of the Board the issues before the Board are sufficiently defined, appellant's claim and Notice of Appeal may be deemed to set forth its complaint and the respondent shall be so notified.

(b) *Answer.* Within 30 days after receipt of complaint, or a Rule 7(a) notice from the Board, the respondent shall file with the Board an original and two copies of an Answer, setting forth simple, concise and direct statements of respondent's defense to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an Answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the respondent and the parties shall be so notified.

Rule 8 *Amendments of Pleadings or Record.* (a) The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order suspends the time for responsive pleadings. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions fair to both parties.

(b) When issues not raised by the pleadings are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised in the pleadings. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. Similarly, if evidence is objected to at a hearing on the ground that it is not relevant to an issue raised by the pleadings, it may be admitted but the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

Rule 9. *Hearing Election.* Except as may be required under Rules 13 or 14, each party shall advise the Board following service upon appellant of respondent's Answer, or a Rule 7(b) Notice from the Board, whether it desires a hearing as prescribed in Rules 20 through 23.

Rule 10 *Submission of Appeal without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record as settled pursuant to Rule 15. Waiver by one party shall not deprive the other party of an opportunity for a hearing. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument and by briefs.

Rule 11 *Prehearing Briefs.* The Board may, in its discretion, require the parties to submit prehearing briefs in any case or motion. If the Board does not require briefs, either party may, upon timely notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party.

Rule 12 *Prehearing Conference.* (a) Whether the case is to be submitted under Rule 10, or heard pursuant to Rules 20 through 23, the Board may, upon its own initiative or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance with similar cumulative evidence;

(5) The possibility for settlement of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal including the filing of proposed Findings of Fact and Conclusions of Law, briefs, and other such papers.

(b) Any conference results not reflected in a transcript shall be reduced to writing by the Administrative Judge and the writing shall thereafter constitute part of the evidentiary record.

Rule 13 *Optional Small Claims (Expedited) Procedure.* (a) the Small Claims (Expedited) procedure for disputes involving $10,000, or less, provides for simplified rules of procedure to facilitate the decision of an appeal, whenever possible, within 120 days after the Board receives written notice of the election.

(b) Promptly upon receipt of an appellant's election of the Small Claims (Expedited) procedure in accordance with Rule 6, the assigned Administrative Judge will arrange an informal meeting or a telephone conference with both parties to:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired, and, if so, fix a time and place;

(4) Establish a schedule for the expedited resolution of the appeal; and

(5) Assure that procedures have been instituted for informal discussions on the possibility of settlement of any or all of the disputes in question.

(c) Failure to request an oral hearing within 15 days of receipt of notice of the Small Claims election shall be deemed a waiver and an election to submit the case on the record under Rule 10.

(d) The subpoena power set forth in Rule 18 is available for use under the Small Claims (Expedited) procedure.

(e) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, of closing the record at an early time so as to permit a decision of the appeal within the target limit of 120 days. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the target date allowing whatever time, up to 30 days, that it considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(f) Decisions in appeals considered under the Small Claims (Expedited) procedure will be rendered by a single Administrative Judge. If there is a hearing, the presiding Administrative Judge may, exercising discretion, hear closing oral arguments of the parties and then render an oral decision on the record. Whenever such an oral decision is rendered, the Board subsequently will furnish the parties with a written transcript of the decision for record and payment purposes and to establish the date for commencement of the time period for filing a motion for reconsideration under Rule 27.

(g) Decisions of the Board under the Small Claims (Expedited) procedure shall have no

value as precedent for future cases and, in the absence of fraud, cannot be appealed.

Rule 14 *Optional Accelerated Procedure.* (a) This option makes available an Accelerated procedure, for disputes involving $50,000 or less, whereby the appeal is resolved, whenever possible, within 180 days from board notice of the election.

(b) Promptly upon receipt of appellant's election of the Accelerated procedure in accordance with Rule 6, the assigned Administrative Judge will arrange an informal meeting or a telephone conference with both parties to:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired and, if so, fix a time and place;

(4) Establish a schedule for the accelerated resolution of the appeal; and

(5) Assure that procedures have been instituted for informal discussions on the possibility of settlement of any or all of the disputes in question.

(c) Failure by either party to request an oral hearing within 15 days of receipt of notice of the election under Rule 6 shall be deemed a waiver and an election to submit on the record under Rule 10.

(d) The subpoena power set forth in Rule 18 is available for use under the Accelerated procedure.

(e) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement for conducting the hearing at the scheduled time and place or, if no hearing is scheduled, the closing of the record at an early time so as to permit decision of the appeal within the target limit of 180 days. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the target date, allowing whatever time, up to 30 days, that it considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(f) Decisions in appeals considered under the Accelerated procedure will be rendered by a single Administrative Judge with the concurrence of another assigned Administrative Judge or an additional member in the event of disagreement.

Rule 15 *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents, papers and exhibits admitted in evidence, and the pleadings, prehearing conference memoranda or orders, prehearing briefs, admissions, stipulations, transcripts of conferences and hearings, and posthearing briefs. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board. In cases submitted pursuant to Rule 10 the evidentiary records shall be comprised of those documents, papers and exhibits submitted by the parties and admitted by the Board.

(b) Except as the Board, in its discretion, may otherwise order, no proof shall be received in evidence after completion of the evidentiary hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 16 *Discovery—General.* (a) General Policy and Protective Orders—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting trade secrets or other confidential information or documents.

(b) Expenses—Each party bears its own expenses associated with discovery, unless in the discretion of the Board, the expenses are apportioned otherwise.

(c) Subpoenas—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 18.

Rule 17 *Discovery—Depositions, Interrogatories, Admissions, Production and Inspection.* (a) When Depositions Permitted—If the parties are unable to agree upon the taking of a deposition, the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination.

(b) Orders on Depositions—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, as governed by order of the Board.

(c) Depositions as Evidence—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received as evidence at such hearing. It will not ordinarily be received as evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(d) Interrogatories, etc.—After an appeal has been filed with the Board, a party may serve on the other party: (1) Written interrogatories to be addressed separately in writing, signed under oath and answered within 30 days unless objections are filed within 10 days of receipt; (2) a request for the admission of specified facts or the authenticity of any documents, to be answered or objected to within 30 days after service. The factual statements and the authenticity of the documents shall be deemed admitted upon failure of a party, to timely respond; and (3) a request for the production, inspection and copying of any documents or objects not privileged, which are relevant to the appeal.

(e) Any discovery engaged in under this Rule shall be subject to the provisions of Rule 16.

Rule 18 *Subpoenas.* (a) Voluntary Cooperation—Each party is expected to cooperate and make available witnesses and evidence under its control without issuance of a subpoena. Additionally, parties will secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(b) Procedure

(1) Upon request of a party and after a showing of relevance a subpoena may be issued requiring the attendance of a witness for the purpose of taking testimony at a deposition or hearing and, if appropriate, the production by the witness, at the deposition or hearing, of documentary evidence, including inspection and copying, as designated in the subpoena.

(2) The request shall identify the name, title, and address of the person to whom the subpoena is addressed, the specific documentary evidence sought, the time and place proposed and a showing of relevancy to the appeal.

(3) Every subpoena shall state the name of the Board, the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified documentary evidence at a time and place therein specified. The presiding Administrative Judge shall sign the subpoena and may, in his discretion, enter the name of the witness, or the documentary evidence sought, or may leave it blank. The party requesting the subpoena shall complete the subpoena before service.

(4) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(c) Requests to Quash or Modify—Upon motion made promptly but in any event not later than the time specified in the subpoena for compliance, the Board may: (i) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; (ii) condition denial of the motion upon payment by the person in whose behalf the subpoena was issued of the reasonable cost of producing the subpoenaed documentary evidence; or (iii) apply protective provisions under Rule 16(a).

(d) Service—

(1) The party requesting the subpoena shall arrange for service.

(2) A subpoena may be served at any place by a United States Marshal or Deputy Marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena shall be made by personally delivering a copy to the person named therein and tendering the fees for one day's attendance and the mileage that would be allowed in the courts of the United States. When the subpoena is issued on behalf of the United States or an officer or agency of the United States, money payments need not be tendered in advance of attendance.

(3) The party requesting a subpoena shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be

deemed by the Board as a sufficient ground for striking the testimony of the witness and any documentary evidence the witness has produced.

(e) Contumacy or Refusal to Obey a Subpoena. In case of a contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 19 *Time and Service of Papers.* (a) All pleadings, briefs or other papers submitted to the Board shall be filed in triplicate and a copy shall be sent to other parties. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Pleadings, briefs or other papers filed with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and to whom a copy was sent.

(b) The Board may extend any time limitation for good cause and in accordance with legal precedent. All requests for time extensions shall be in writing except when raised during a recorded hearing.

(c) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day. Unless otherwise stated in a Rule or Board Order, dates will be met and papers considered filed when deposited in the mail system of the U.S. Postal Service, or hand-delivery is acknowledged at the Board offices.

Hearings

Rule 20 *Hearings: Time and Place.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, the requirements for expedited or accelerated procedures and other pertinent factors. On request by either party and for good cause, the Board may, in its discretion, change the time and place of a hearing.

Rule 21 *Hearings: Notice.* The parties shall be given at least 15 days notice of time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties. Failure to promptly acknowledge shall be deemed consent to the time and place.

Rule 22 *Hearings: Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the presiding Administrative Judge may order the hearing to proceed and the case will be regarded as submitted by the absent party as under Rule 10.

Rule 23 *Hearings: Rules of Evidence and Examination of Witnesses.* (a) Nature of Hearings—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the respondent may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding judge. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) Examination of Witnesses—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge shall otherwise order.

Representation

Rule 24 *Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 25 *Respondent.* Counsel may, in accordance with their authority, represent the interest of the Government or other client before the Board. They shall file notices of appearance with the Board, and serve notice on appellant or appellant's attorney.

Board Decision

Rule 26 *Decisions.* Except as allowed under Rule 13, decisions of the Board shall be in writing upon the record as described in Rule 15 and will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be available for public inspection at the offices of the Board.

Rule 27 *Motion for Reconsideration.* (a) Motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be filed within 30 days after receipt of a copy of the Board's decision.

(b) Motions for reconsideration of cases decided under either the Small Claims (Expedited) procedure or the Accelerated procedure need not be decided within the original 120-day or 180-day limit, but shall be processed and decided rapidly.

Rule 28 *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders.

Dismissals

Rule 29 *Dismissal Without Prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 30 *Dismissal for Failure to Prosecute.* Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate. If no cause, the Board may take such action as it deems reasonable and proper.

Sanctions

Rule 31 *Failure to Obey Board Order.* If any party fails or refuses to obey an order issued by the Board, the Board may issue such orders as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

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Part IX

Council on Wage and Price Stability

Anti-inflationary Price Standards; Procedural Rules; Final Rules

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Anti-Inflationary Price Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Final Price Standards for the Second Program Year.

SUMMARY: On August 10, 1979, the Council published an *Issue Paper* (44 FR 47232) soliciting public comment on issues that arose with the anti-inflationary standards for the first program year. The second-year price standards were issued in interim final form on September 28, 1979, along with a detailed analysis of the comments received in response to the *Issue Paper* (44 FR 56900, October 2, 1979). The Council solicited additional public comments on the interim final price standards, which were due by October 17, 1979. Those comments have been thoroughly reviewed. In response, the Council has made a number of changes, and the price standards are now published in final form.

EFFECTIVE DATE: October 1, 1979.

ADDRESS: Questions concerning the price standards should be addressed to the Office of Price Monitoring, Council on Wage and Price Stability, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Industries, Contact Person, and Telephone Number

Metals, Machinery and Equipment, Eugene Roberts—456–7784
Food, Agriculture and Trade, Stephen Hiemstra—456–7740
Energy, Chemicals, Utilities and Transportation, John Keith—456–7747
Construction and Building Materials, Joseph Lackey—456–7156
Health, Insurance and Other Services, Arthur Corazzini—456–7730
Exceptions, Walter Leibowitz, David Wagner—456–773

SUPPLEMENTARY INFORMATION:

Analysis of Comments and Changes.

Over seventy comments were received from businesses, trade associations, State and local governments, nonprofit organizations, individuals, and law firms. Several acknowledged the Council's efforts to respond to the comments on the *Issue Paper*, but a number stated that further modifications would be desirable and consistent with the objectives of the anti-inflation program.

The principal issues raised by the public comments, as well as changes initiated by the Council, are discussed in the following sections.

1. *Two-Year Price Limitation.* Some commentators repeated their arguments about the lowering of the maximum allowable price increase in the second year to 8.5 percent (which, compounded with the 9.5-percent first-year ceiling, yields the two-year ceiling of 19 percent), and the retention of the same base period as was used for the first program year. The Council's reasons for these actions were fully set forth in the narrative to the interim final standards and therefore need not be repeated here.

A number of companies objected also to the prospect that the Council would consider requiring the posting of base-period prices for individual products. These commentators stated that a posting requirement would be burdensome, misunderstood by the public, and of little or no value in ensuring compliance with the price standards. The Council is not acting on this proposal at this time; we believe it should be examined by the recently announced Price Advisory Committee.

Several commentators proposed that long-term contracts entered into after the start of the first program year that call for deliveries in the second year should be excluded from price calculations. These contracts, however, were entered into at a time when companies were asked to exercise price restraint and when a second program year could reasonably be anticipated. Moreover, the two-year limitation is no more stringent than the first-year standard. Accordingly, we believe that exclusion of these contracts is not warranted.

One change has been made to clarify the two-year price limitation: Section 705.2(b) has been revised to state that any demonstrated inability to compute a base-period price change—rather than an inability based solely on a lack of historical records—triggers the assignment of a two-year price limitation of 10 percent.

2. *Insufficient Product Coverage.* Many commentators vigorously opposed the elimination of the rule exempting companies that derive 75 percent of more of their revenues from excluded products. They urged that applying the standards to previously exempt lines of business would impose significant administrative burdens and would not produce offsetting economic benefit. These arguments were earlier rejected by the Council. Briefly stated, the Council concluded that the slippage in the price standard caused by the 75-percent rule outweighs any additional administrative burden created by its deletion.

3. *Profit Limitation.* The tightening of the profit limitation for the second program year was viewed by many with alarm. The tightening resulted from a redefinition of base-year profits as either: (1) actual base-year profits or (2) the average of actual base-year profit and the multiple of base-year revenue and the best-two-out-of-three profit margin. (During the first year, alternative (2) was simply base-year revenue multiplied by the best-two-out-of-three profit margin.) Some commented that this change penalizes companies that were caught in a cost-price squeeze in the base year; others argued that it penalizes firms that made a good-faith effort to comply with the President's appeal for price restraint in 1978.

The Council has considered these comments carefuly. It has decided to retain the revised definition of base-year profits in order to limit the price increases of companies complying with the profit limitation to a pass-through of increased costs, rather than permitting them to use exceptions to improve their profit positions. It is simply not rational to permit companies to improve their profits markedly *because* they happen to be subject to uncontrollable cost increases. The Council is also concerned about the fact that the adjustment of actual base-year profit is asymmetric; that is, companies with base-year profit margins *above* the best-two-out-of-three are not compelled to adjust them

downward, while those *below* the best-two-out-of-three are able to move upward. This asymmetry results in serious slippage, which we have moved to reduce by the redefinition of base-year profit.

There was also significant discontent about the 13.5-percent limitation on growth in dollar profits (6.5 percent compounded over the two program years). It was argued that the implicit second-year limitation should be higher than 6.5 percent because the rate of inflation during the first year and the expected rate during the second year are markedly higher than 6.5 percent. The Council believes, however that the profit limitation was inordinately attractive in the first year, and that a disturbingly large number of companies therefore sought the profit-margin exception rather than stayed within the price limitation that is preferable on grounds of economic efficiency. Consequently, it is prudent to make the profit limitation less attractive relative to the price limitation.

Other comments urged that an adjustment to the profit limitation should be permitted for documented productivity improvements. The Council has been and remains sensitive to the need to encourage productivity gains. It is difficult to formulate a specific exception for productivity-improving capital-investment programs, however, because such programs are an ongoing part of most companies' operations, and a generic exception could result in a substantial dilution of the price restraint that the standards seek to achieve, without altering companies' investment plans. Thus, rather than provide a blanket exception, the Council has decided to amend its procedural rules to permit modifications of exceptions on a case-by-case basis for documented extraordinary improvements in productivity that are demonstrably attributable to unusual capital-expenditure programs (see § 706.37(b)).

Some companies commented that new products and exports that are excluded from price calculations should also be excluded from profit calculations in order to strengthen the U.S. economy. Although the Council recognizes the need to encourage new-product development and exports, there typically is no economically sound method of allocating certain costs among excluded and nonexcluded products. On balance, the Council has concluded that new products and exports should not be excluded from profit calculations. Language has been added to the definition of "profit margin" to underscore the Council's position on this issue.

Several companies objected to the Council's existing definition of "profit," which includes interest expense. It is true that interest rates have risen sharply, so that inclusion of interest limits allowable growth in pure profits. Nonetheless, the Council's original rationale for treating interest expenses as part of profit—neutrality with respect to alternative forms of capitalization—continues to be compelling.

One change has been made in the exception section that should be noted: namely, references to intermediate price changes have been deleted since they were incorrectly included in the first place.

4. *Modified Standards.* Several firms viewed as discriminatory the provision that a unit eligible for a modified standard that does not opt for that standard must nevertheless demonstrate that it cannot comply with that modified standard before it is permitted to move to the profit limitation as a result of uncontrollable cost increases. It is true that units not eligible for a modified standard may move to the profit limitation by showing only that uncontrollable costs preclude them from complying with the two-year price limitation. Yet, while units that are eligible for a modified standard have an additional step, those units also have the relative advantage of the availability of a modified standard at the outset. Indeed, the modified standards were provided, in part, precisely because they allow automatic pass-through of foreseeable uncontrollable cost increases (e.g., crude-oil price increases paid by refiners) or because of the volatility of important cost components (e.g., farm prices paid by food processors). For these reasons, we are retaining this provision.

Retailers and wholesalers eligible for the percentage-gross-margin standard questioned the appropriateness of the requirement that the manufacturing and processing operations of a vertically integrated wholesale or retail business be disaggregated. The thrust of the comments was that firms do not keep records permitting such disaggregation or that disaggregation would require unduly burdensome or costly recalculations of gross margins, particularly for small companies that are caught by the 10-percent cut-off. It was argued that this problem is especially severe for some vertically integrated food retailers since these companies do not account separately for the cost of food products and the cost of other materials used in processing, thereby making it difficult, if not impossible, to calculate these gross margins as defined in the standards. In response to these comments, the Council staff has made inquiries about industry accounting practices, including examining the accounting records of a major food retailer.

On the basis of those inquiries the Council is convinced that, for most companies, adequate accounting records exist for purposes of disaggregation. Moreover, if a firm can demonstrate that adequate records do not exist, the revised inability-to-compute provision of the percentage-gross-margin standard, as well as of the gross-margin standard for food processors, provides that the Council will help firms develop alternative computation procedures. Also, to avoid unreasonable burdens on smaller companies, the 10-percent cut-off has been eliminated, leaving only the $50 million threshold.

Another comment on the percentage-gross-margin standard for wholesale and retail trade was that assigning a zero margin trend to units having a negative historical margin trend is unfair to them, since it allegedly restricts them from making any gross-margin gain. First, a *constant* percentage gross margin typically is associated with *growth* in *dollar* gross margin (this is true whenever the cost of goods purchased for processing or resale is increasing). In particular, if costs of goods purchased for processing or resale are growing at x percent, a constant percentage gross margin implies an x percent growth in dollar gross margin. Second, these comments overlook the fact that assigning a zero margin trend reflects what is, in some cases, a substantial upward adjustment for those units with negative historical margin trends; this is analogous to the floor of the range of allowable price increases under the price standard.

Retailers and wholesalers also reiterated their concern about monitoring compliance with quarterly limitations, but they provided no facts or arguments not previously presented to the Council. Our views on this issue are set forth in detail in the narrative of the interim final standard.

Many comments were received from companies eligible for the gross-margin standards for food processors and petroleum refiners. The recurring theme, apart from objections to the level of the allowable two-year limitation (13.5 percent), was that the Council should not have changed from the base-quarter measure used during the first program year to the annual standard set forth in the interim final standards for the second program year. Essentially the affected parties argue that departing

from the base-quarter concept could result in firms' incurring substantial expenses to recompute historical gross margins. In addition, some refiners urged that the requirement of an output mix adjustment be deleted, and almost all refiners objected to the measurement of margin on a per-barrel basis.

The Council believes that some of these contentions are valid. The extra costs and administrative burdens that would result from changing from a quarterly to an annual base are apparently too great to justify the switch, which was proposed because of a concern that quarterly gross margins are more volatile and therefore less reliable than annual ones. Accordingly, these standards have been redrafted to return to a base-quarter measure. However, the required input and output adjustments are clearly appropriate for petroleum refiners, particularly during the current shortage, because mix adjustments have had a profound effect on margins; moreover, giving the refiners the option of making these adjustments—without requiring them to do so—would result in slippage that is inconsistent with the objectives of the anti-inflation program. Similarly, we continue to believe that a per-barrel adjustment is logical since refiners, unlike firms in other industries, have a reliable measure of physical volume. We have, however, clarified the standards to indicate our intention to have the input/output mix adjustments made using current weights.

Another comment on the refiners' gross-margin standard suggested that fuels used to run a refinery should not be included in gross margin since those costs are significant for all refiners. Such costs are, however, important in many operations throughout the economy. The Council believes it should treat such costs in a like manner across all segments of the economy. More important, the inclusion of processing fuels in the gross margin encourages the substitution of other inputs for the increasingly costly refined petroleum products. We have revised the definition of gross margin to make explicit this aspect of the standard.

Finally, some of the commentators suggested that refiners' petro-chemical operations should have a separate gross-margin standard because their costs are highly volatile. Although establishing such a standard does not now seem warranted, the Council has revised the refiners' gross-margin standard to include the manufacture and distribution of petrochemical operations of vertically integrated refiners. Since petrochemicals are essentially refined petroleum products, this is simply a logical extention of the standard.

Issued in Washington, D.C., November 1, 1979.

R. Robert Russell,

Director, Council on Wage and Price Stability.

Accordingly, in 6 CFR Part 705, Subparts A, C, and D are revised to read as follows:

PART 705—ANTI-INFLATIONARY PAY AND PRICE STANDARDS

Subpart A—The Price Standard

Sec.

Subpart C—Modified Price Standards for Selected Industries

Subpart D—Definitions

Authority: Council on Wage and Price Stability Act, Pub. L. 93-387 (August 24, 1974), as amended by Pub. L. 94-78 (August 9, 1975) and Pub. L. 95-121 (October 5, 1977), 12 U.S.C. 1904 note; as last amended by Pub. L. 96-10 (May 10, 1979); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979).

Subpart A—The Price Standard

§ 705.1 Compliance with the price standard.

A compliance unit complies with the price standard if and only if it satisfies the two-year and the intermediate price limitations in § 705.2 and § 705.3, subject to the applicable provisions of § 705.4, § 705.5 and § 705.6.

§ 705.2 The two-year price limitation.

A compliance unit complies with the two-year price limitation if its two-year price change is no greater than (1) the base-period price change or (2) 19 percent, whichever is less. However, a compliance unit will be in compliance with the two-year price limitation regardless of its base-period price change if its two-year price change is 5 percent or less.

(a) The base-period price change is the sales-weighted average of the percentage changes of a compliance unit's product prices from the last calendar or complete fiscal quarter of 1975 to the corresponding quarter of 1977.

(b) If a compliance unit cannot compute its base-period price change, it is assigned a two-year price limitation of 10 percent.

(c) The two-year price change is the sales-weighted average of the percentage changes of a compliance unit's product prices from the last calendar or fiscal quarter completed before October 2, 1978, to the corresponding quarter of 1980.

§ 705.3 Intermediate price limitations.

(a) A compliance unit complies with the 18-month price limitation if the 18-month price change does not exceed three quarters of the two-year price limitation. The 18-month price change is the sales-weighted average of the percentage changes of a compliance unit's product prices from the base quarter to the second quarter of the second program year.

(b) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it complies with the 18-month price limitation of the 18-month price change does not exceed the two-year price limitation less one half of the difference between the two-year price limitation and the price change realized during the first program year.

(c) The sales-weighted average price change from the base quarter to the first quarter of the second program year should not exceed the 18-month price limitation in paragraph (a) or, if

applicable, in paragraph (b) of this section. The sales-weighted average price change from the base quarter to the third quarter of the second program year should not exceed the two-year price limitation.

(d) A compliance unit may exceed the intermediate price limitations if it can demonstrate that its price increases:

(1) are justified on grounds of seasonal variations in business operations, historical business practices, or unusual business conditions; and

(2) will not prevent compliance with the two-year price limitation by the end of the second program year.

§ 705.4 Exclusions.

(a) Producers of goods and services in the following categories should exclude the revenue from the sale of those goods or services from the calculation of the base-period price change and the two-year and intermediate price changes:

(1) Agricultural, fishing, forestry, and mineral products included in the 1972 Standard Industrial Classification Major Groups 01, 02, 08 (except 085), 09, 10 (except 108), 11 (except 1112), 12 (except 1213), 13 (except 1321 and 138), and 14 (except 148).

(2) Recyclable scrap materials, including, but not limited to, ferrous and nonferrous metal scrap, wastepaper, textile waste, scrap rubber, scrap plastics, and glass cullet.

(3) Commodities whose historical and current price changes are closely tied to price movements in an organized exchange market for that commodity, either domestic or foreign, including, but not necessarily limited to, gold, silver, oilseeds, and oil and protein meals.

(4) Interest received.

(5) Exports.

(6) Hospital services subject to price monitoring by the Department of Health, Education, and Welfare.

(7) Services of health maintenance organizations.

(8) Products exchanged in other than arms-length transactions.

(9) New or discontinued products, except those products that were sold by the compliance unit throughout the base period or throughout the first two program years should be included in the respective calculations of the price changes for those periods.

(10) Custom products, except those custom products produced and delivered throughout the base period or throughout the first two program years should be included in the respective calculations of the price changes for those periods.

(b) Deliveries during the two program years at prices determined by contracts in effect before October 2, 1978, should be excluded from the calculation of the two-year and intermediate price changes. This exclusion applies only if the contract clearly specifies the final transaction prices or contains a nondiscretionary formula for determining the final transaction prices (i.e., only of there is no seller discretion to adjust those prices).

§ 705.5 Special situations.

(a) *Insufficient Product Coverage.* If products excluded under § 705.4(a) (8) through (10) account for one-third or more of a compliance unit's total revenue for the first two program years minus revenue from the sale of products excluded under § 705.4 (a)(1) through (7) and 705.4(b), the compliance unit should

(1) comply with the two-year and intermediate price limitations in §§ 705.2 and 705.3 for those products not excluded under § 705.4, unless those products account for less than $50 million in sales during each of the first two program years, and

(2) comply with the profit limitation in § 705.6(a) for the compliance unit as a whole.

(b) *Acquisitions.* A company acquired after September 30, 1975, may be combined with the acquiring company or may be treated as a separate compliance unit.

(c) *Divestitures.* A company should exclude the data for any dividend entity from all calculations.

§ 705.6 Exceptions.

(a) *Inability to Compute and Uncontrollable Cost Increases.* If a compliance unit cannot calculate its two-year price change or cannot comply with the two-year price limitation because of uncontrollable increases in the prices of the goods and services that it buys, it should satisfy the following two-part profit limitation:

(1) The profit margin in the second program year should not exceed the sales-weighted average profit margin for the best two of the compliance unit's last three fiscal years completed before October 2, 1978.

In addition, the profit margin during each quarter of the second program year should not exceed the same sales-weighted average unless it can be demonstrated that any excess is consistent with an explicit plan, based on reasonable projections of economic conditions, to achieve compliance for the second program year as a whole.

(2) Second-program-year profit should not exceed base-year profit by more than 13.5 percent plus any positive percentage growth in physical volume from the base year to the second program year. Base-year profit can be either (i) actual base-year profit or (ii) base-year revenue times the average of the base-year profit margin and the average profit margin determined in paragraph (a)(1) of this section.

(b) *Undue hardship and gross inequity.* The Council may except a compliance unit from, or make appropriate adjustments to, the price limitations or the profit limitation if their application would cause undue hardship or gross inequity.

(1) An undue hardship exists if application of the price standards would seriously threaten the company's financial viability.

(2) A gross inequity is any situation that, in the Council's judgment, is manifestly unfair.

Subpart C—Modified Price Standards for Selected Industries

§ 705.40 General applicability of modified price standards.

This subpart provides modified price standards for industries for which the price standard in Subpart 705A may be inappropriate.

§ 705.41 Exceptions.

(a) Except as noted in the following sections, a compliance unit eligible to apply a modified price standard may alternatively comply with the two-part profit limitation in § 705.6(a) if and only if it can demonstrate that: (1) it cannot make the calculations required for the modified standard; or (2) as a result of uncontrollable cost increases, compliance with the modified standard would cause a significant deterioration of the compliance unit's profit position.

(b) The Council may except a compliance unit from, or make appropriate adjustments to, the relevant modified standard if application of the relevant modified price standard would cause undue hardship or gross inequity within the meaning of § 705.6(b).

§ 705.42 Percentage-gross-margin standard for wholesale and retail trade.

(a) *Eligibility.* (1) A compliance unit in the wholesale and retail trade industries (1972 Standard Industrial Classification Major Groups 50 through 59, including food service operations but excluding manufacturers sales branches and offices) is eligible for a percentage-gross-margin standard as an alternative to the price standard in Subpart 705A.

(2) Notwithstanding the definition of "compliance unit" in Subpart 705D, manufacturing and processing operations of a compliance unit applying the percentage-gross-margin limitation must be treated as separate compliance units under Subpart 705A or the appropriate modified standard in

Subpart 705C if the base-year sales of these operations exceeded $50 million. The transfer-price policy of vertically integrated companies must be consistent over time.

(b) *Definition.* (1) The *gross margin* is net sales (gross sales adjusted for discounts, returns, coupons, and other allowances) less the cost of goods sold. For manufacturing or processing operations that are allowed to be aggregated with wholesale and retail operations, the gross margin is net sales less the cost of material imputs used in the manufacturing or processing operations.

(2) The *percentage gross margin* is the gross margin divided by net sales.

(3) The *margin trend* is the percentage change of the percentage gross margin between the base year and the corresponding year prior to October 2, 1976. If this percentage change is negative, then the margin trend is zero.

(4) In computing its percentage gross margin, a compliance unit may adjust for changes in the composition of sales at any reasonable level of aggregation, such as division or product, but such adjustments must be made consistently.

(c) *Annual Percentage-Gross-Margin Limitation.* A compliance unit complies with the annual percentage-gross-margin limitation if its percentage gross margin in the second program year does not exeed its percentage gross margin during the base year multiplied by the sum of 1 plus its margin trend.

(d) *Intermediate Percentage-Gross-Margin Limitations.* A compliance unit complies with the intermediate percentage-gross-margin limitations if:

(1) Its percentage gross margin in each of the first and second quarters of the second program year does not exceed its base-year percentage gross margin by more than 87.5 percent of its margin trend, and

(2) Its percentage gross margin in each of the third and fourth quarters of the second program year does not exceed its base-year percentage gross margin by more than 112.5 percent of its margin trend.

(e) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it need not comply with the intermediate limitations in paragraph (d) of this section. However, during the second program year, any percentage-gross-margin increases allowable under paragraph (c) of this section should be implemented in equal quarterly increments.

(f) A compliance unit may exceed the intermediate limitations in paragraph (d) of this section if it can demonstrate that its percentage-gross-margin increases:

(1) Are justified on grounds of seasonal variations in business operations, historical business practices, or unusual business conditions, and

(2) Will not prevent compliance with the annual limitation in paragraph (c) of this section.

(g) *Inability to Compute.* If a compliance unit is unable to compute its base-year percentage gross margin or gross-margin trend, the Council may assign it a percentage gross-margin limitation or provide alternative computation procedures.

§ 705.43 Gross-margin standard for food manufacturing and processing.

(a) *Eligibility.* A compliance unit in the food manufacturing and processing industries (1972 Standard Industrial Classification Major Group 20, including nonalcoholic but excluding alcoholic beverage industries) is eligible for a gross-margin standard as an alternative to the price standard in Subpart 705A.

(b) *Definitions.* (1) The *gross margin* is equal to net sales (gross sales adjusted for discounts, returns, coupons, and other allowances) less the cost of food products used in food manufacturing and processing, relating to those sales.

(2) In computing its gross margin, a compliance unit may adjust for changes in the composition of sales at any reasonable level of aggregation, such as division or product, but such adjustments must be made consistently.

(3) The compliance unit may substitute for the base-quarter gross margin the base-quarter sales multiplied by the average percentage gross margin for the base year.

(c) *Two-Year Gross-Margin Limitation.* A compliance unit complies with the two-year gross-margin limitation if its gross margin in the fourth quarter of the second program year does not exceed its base-quarter gross margin by more than 13.5 percent plus any positive percentage growth in physical volume over base-quarter volume.

(d) *Intermediate Gross-Margin Limitations.* (1) A compliance unit complies with the intermediate gross-margin limitation in the first and second quarters of the second program year if its gross margin in each of those quarters does not exceed its base-quarter gross margin by more than 10 percent plus any positive percentage growth in physical volume over the base-quarter volume (one-fourth of the base-year volume if § 705.43(b)(3) is followed).

(2) A compliance unit complies with the intermediate gross-margin limitation in the third quarter of the second program year if its gross margin in that quarter does not exceed its base-quarter gross margin by more than 13.5 percent plus any positive percentage growth in physical volume over the base-quarter volume (one-fourth of the base-year volume if § 705.43(b)(3) is followed).

(e) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it need not comply with the intermediate gross-margin limitations in paragraph (d) of this section. However, during the second program year, the allowable gross-margin increase should be implemented in equal quarterly increments.

(f) A compliance unit may exceed the intermediate gross-margin limitation in paragraph (d) of this section if it can demonstrate that increases in excess of these limitations:

(1) Are justified on the grounds of seasonal variations in business operations, historical business practices, or unusual business conditions, and

(2) Will not prevent compliance with the two-year gross-margin limitation in paragraph (c) of this section.

(g) *Physical Volume Increases.* Physical volume increases to be used in justifying increases in gross margins may be computed by deflating revenues using a measure of price increases as the deflator, or by computing changes in units or tonnage sold when such units are revenue weighted by major product categories.

(h) *Inability to Compute.* If a compliance unit is unable to compute its base-quarter gross margin, the Council may assign a gross-margin limitation or provide alternative computation procedures.

§ 705.44 Gross-margin standard for petroleum-refinery operations.

(a) *Eligibility.* As an alternative to the price standard in 705A, petroleum companies may elect the gross-margin standard for their refining operations.

(b) *Definitions.* (1) Petroleum refiners are "refiners" as defined in § 212.31 of the Department of Energy regulations, 10 CFR 212.31 (in brief, a firm that refines, blends, or substantially changes crude oil and certain petroleum products, and sells its output to resellers, retailers, or ultimate consumers).

(2) Notwithstanding the definition of "compliance unit" in Subpart 705D, a petroleum refiner may disaggregate its operations into the following three groups and treat each as a separate compliance unit:

(i) Petroleum-refinery operations (including the distribution and marketing of petroleum products and the manufacture and distribution of petrochemicals);

(ii) Crude-oil and natural-gas production to the point of first sale and transfer; and

(iii) All other operations.

(3) For petroleum-refining operations, the *gross margin* is the net sales (gross sales adjusted for discounts, rebates, and other allowances) less the cost of petroleum inputs associated with those sales, including crude oil, feedstock, blendstock, finished petroleum products purchased for resale, natural gas, natural-gas liquids, and natural-gas-liquid products (but not including fuel used in refinery operations). The gross margin must be adjusted to remove the effects of changes in the mix of inputs and outputs (for example, a shift to greater utilization of crude and away from blends, or a shift away from gasoline to middle distillates). The input and output mix adjustments must use current quarter weights.

(c) *Two-Year Gross-Margin Limitation.* A refiner complies with the two-year gross-margin limitation if its gross margin per barrel in the fourth quarter of the second program year does not exceed its base-quarter gross margin per barrel by more than 13.5 percent.

(d) *Intermediate Gross-Margin Limitation.* (1) A refiner complies with the intermediate gross-margin limitation in the first and second quarters of the second program year if its gross margin per barrel in each of those quarters does not exceed its base-quarter gross margin per barrel by more than 10 percent.

(2) A refiner complies with the intermediate gross-margin limitation in the third quarter of the second program year if its gross margin per barrel in that quarter does not exceed its base-quarter gross margin per barrel by more than 13.5 percent.

(e) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it need not comply with the intermediate gross-margin limitations in paragraph (d) of this section. However, during the second program year, the allowable gross-margin increase should be implemented in equal quarterly increments.

(f) A compliance unit may exceed the intermediate gross-margin limitations in paragraph (d) of this section if it can demonstrate that increases in excess of these limitations:

(1) Are justified on the grounds of seasonal variations in business operations, historical business practices, or unusual business conditions, and

(2) Will not prevent compliance with the two-year gross-margin limitation in paragraph (c) of this section.

(g) *Application of the Profit Limitation.* If any of the compliance units of a petroleum refiner properly evaluates its compliance under the two-part profit limitation in § 705.6(a), it should follow generally accepted accounting principles and procedures in allocating costs and expenses to the respective compliance units if they have historically made these allocations. Costs that have not historically been allocated (for example, unallocated corporate overhead expenses) may be allocated to the compliance unit, other than the crude-oil and natural-gas production units that has the largest dollar sales volume, or in any other reasonable manner, as long as it is done consistently in the base quarter and the second program year.

§ 705.45 Gross-margin standard for electric, gas, and water utilities.

(a) *Eligibility.* Utilities that sell electric power at retail or wholesale, that sell natural gas at retail or wholesale but not at the wellhead (1972 Standard Industrial Classification Code 4932), and that provide drinking water at retail or wholesale are eligible for a gross-margin standard as an alternative to the price standard in Subpart 705A.

(b) *Definitions.* (1) For electric and gas utilities, the *gross margin* is sales less the cost of purchased fuels, gas, and power.

(2) For water utilities, the *gross margin* is sales less the cost of purchased water and power.

(c) *Gross-Margin Standard.* A compliance unit complies with the gross-margin standard if its gross margin in the second program year does not exceed its gross margin in the base year by more than 13.5 percent plus any positive percentage growth in physical volume over the same period.

§ 705.46 Professional-fee standard.

(a) *Coverage.* (1) This standard applies to fees and charges for the services of physicians, dentists, lawyers, accountants, engineers, architects, outside directors, and other professionals; these include all activities included in 1972 Standard Industrial Classification Major Groups 80 (except 805, 806, 808, and 809), 81, 891, and 893.

(2) All compliance units that provide professional services on a fee-for-service basis, regardless of the proportion of the compliance unit's total revenue that is derived from professional services, are expected to comply with the professional-fee standard for that portion of the compliance unit's revenue. For other lines of business, the compliance unit should comply with the applicable price standard in Subpart 705A or Subpart 705C.

(b) *Professional-Fee Standard.* A compliance unit complies with the professional-fee standard if

(1) The sales-weighted average percentage change in fees from the base year to the second program year does not exceed 13.5 percent, and

(2) The percentage increase in the fee for any single service from the base year to the second program year does not exceed 19 percent.

The period used to determine sales-volume weights should be a period of time that is representative of normal business operations.

§ 705.47 Federal, State, and local government enterprises, private nonprofit enterprises, and government-subsidized private companies.

(a) Subject to paragraph (c) of this section, government enterprises as defined in paragraph (b) of this section and private nonprofit enterprises should comply with the price standard in Subpart 705A or the appropriate alternative standard in Subpart 705C.

(b) A government enterprise is any unit of a Federal, State, or local government for which data are available to determine compliance and that satisfies either of the following conditions:

(1) It is the U.S. Postal Service, a college or university, a toll facility, an alcoholic-beverage store, a commissary (retail outlet), a parking system, a port authority, an airport, an electric, gas, sewer, water, or other utility, a transportation service, a housing authority, or a health facility other than a hospital; or

(2) Its base-year operating revenue (i.e., revenue from sales of goods and services) equals at least 50 percent of base-year operating expenses.

(c) Government enterprises and private compliance units that receive government operating subsidies should use a subsidy-adjusted price change for both the base period and the two-year program period. In either period, the subsidy-adjusted price change is the weighted sum of the percentage price change and the percentage change in the operating subsidy per unit of output during that period. The price change is weighted by revenues from sales of goods and services divided by the sum of these revenues and total operating subisdies. The change in the subsidy per unit of output is weighted by total operating subsidies divided by the sum of revenues from sales of goods and services and total operating subsidies. During the base period, weights are determined by using the revenues and operating subsidies in the last calendar or complete fiscal quarter of 1975.

During the program year, weights are determined using the revenues and operating subsidies in the last calendar or fiscal quarter completed before October 2, 1978.

(d) If a government enterprise or a private nonprofit enterprise cannot comply with the price standard in 705A or the appropriate alternative standard because it cannot calculate its price change or because of uncontrollable increases in the prices of goods and services that it buys, it should comply with the profit limitation in 705.6(a) substituting the terms "operating margin" for "profit margin" and "operating surplus" for "profits." If the compliance unit utilizes fund accounting, operating surplus is the budget line item "net increases in current fund balance" and operating margin is operating surplus divided by operating funds or revenues.

Compliance units reporting deficits in their current fund balance may be excepted from this standard if they qualify for an exception based on undue hardship or gross inequity.

§ 705.48 Price standard for medical and dental insurance providers. [Reserved]

§ 705.49 Price standard for providers of insurance other than medical and dental insurance. [Reserved]

§ 705.50 Standard for financial institutions. [Reserved]

Subpart D—Definitions

§ 705.60 Base-period price change.

The base-period price change is the sales-weighted average of the percentage changes in product prices from the last calendar or complete fiscal quarter of 1975 to the corresponding quarter of 1977. It may be computed using the following formula:

$$BPPC = \left[\left(\sum_i S_i \times \left(\frac{P_i(77)}{P_i(75)}\right) - 1.0\right) \times 100\right]$$

where

$BPPC$ = the base-period price change;

$P_i(77)$ = price of the ith product in the last complete fiscal or calendar quarter of 1977;

$P_i(75)$ = price of the ith product in the last complete fiscal or calendar quarter of 1975;

S_i = ith-product sales share (i.e., the ith-product sales divided by total sales) in the last complete fiscal or calendar quarter in 1975; and

$\sum_i$ = the summation sign, where the subscript i runs over all products not excluded in 705A-4.

The choice of fiscal or calendar quarters must be consistent throughout the compliance unit's calculations. If seasonal factors are important, the weights, Si, can be calculated using data for the entire base period. The weights used to calculate the base-period price change in the second program year should be consistent with those used in the first program year.

§ 705.61 Base quarter.

The base quarter is either (a) the compliance unit's last complete fiscal quarter before October 2, 1978, or (b) the calendar quarter July 1, 1978, through September 30, 1978, except as otherwise specified in a modified price standard.

§ 705.62 Base year.

The base year is the four calendar or fiscal quarters ending before October 2, 1978, except as otherwise specified in a modified price standard.

§ 705.63 Company.

A company is any independent contractor, sole proprietorship, partnership, corporation, association, estate, trust, or any other entity, however organizated, that is engaged in domestic business operations and that is neither controlled nor owned by another domestic entity. The term "company" includes Federal, State, and local government entities.

§ 705.64 Compliance unit.

(a) A compliance unit is a company or part of a company separately identified for purposes of compliance with the pay or price standards. An unconsolidated, controlled entity must be treated as a separate compliance unit. Entities that are consolidated should be consolidated in accordance with 17 CFR 210.4-01 to -09 prescribed by the Securities and Exchange Commission.

(b) One or more parts of a consolidated company may be treated as a separate unit for purposes of complying with the price standard if

(1) Each part maintains accounting records that permit the Council to ascertain whether the prices and profits of each part accurately reflect the economic realities of its operations,

(2) Allocation of overhead among the parts is made in a consistent and reasonable manner, as if the parts were not commonly owned,

(3) Transfers between parts are valued as if they were arms-length transactions, and

(4) Internal accounting procedures adhere to generally accepted accounting principles and procedures, consistently and historically applied.

§ 705.65 Custom product.

A custom product is one that is produced specifically to the unique specifications of a particular buyer. Such products must have characteristics that are substantially different from those of any other product sold by the company. A product is not substantially different merely because of differences in style, packaging, or quality. If such differences are significant, appropriate adjustments should be made when measuring prices.

§ 705.66 Employee.

An employee is any individual residing in the United States who is either an employee within the meaning of section 3121(d) of the Internal Revenue Code, 26 U.S.C., or the National Labor Relations Act, as amended, 29 U.S.C. 151 *et seq.*

§ 705.67 First program year.

A compliance unit's first program year is the one-year period immediately following its base quarter.

§ 705.68 Future-value incentive plans.

Future-value incentive plans include any long-term plans under which units (shares, stock options, awards, shares subject to option, or investment amounts) are granted or issued, the compensation value of which will not be known until some future time. Examples of these include qualified and nonqualified stock options, performance share plans, performance unit plans, stock appreciation rights, restricted stock or property plans, phantom-stock plans, and book-value plans.

§ 705.69 Health maintenance organization.

A health maintenance organization is one that provides health services to its members on a prepaid basis either directly or under contract.

§ 705.70 New products.

A new product is one that is introduced during either the base period or the first two program years. A product does not become new merely because of changes in specifications, style, packaging, or quality. If such changes are significant, appropriate adjustments should be made in measuring prices (for example, quality decreases should be reflected as price increases and quality increases as price decreases).

§ 705.71 Organized exchange market.

A market qualifies as an organized exchange market only if the following three conditions are satisfied:

(a) The market is established for a specific purpose and is governed by a defined set of rules regarding (1) eligibility for participation in the market, (2) the roles of participants (including buyers, sellers, and middlemen or specialists), (3) offers, acceptances, and rejections of bids, and (4) the procedure for an exchange.

(b) The exchange prices are determined exclusively within the act of exchange and are unaffected by the requirements or resources of individual buyers or sellers.

(c) The price determined on the exchange is equal to the price paid by the individual taking physical delivery of the commodity.

§ 705.72 Pay.

Pay includes the following:

(a) The straight-time wage and salary paid during the compliance unit's customary pay period, including, where applicable, payments for shift differentials, skill differentials, and cost-of-living adjustments;

(b) Incentive pay and other forms of income such as:

(1) Sales commissions and production-incentive pay;

(2) Bonuses and other annual incentive compensation charged when earned (that is, when the services are performed that generate the compensation);

(3) Compensation from long-term incentive plans (other than those covered under 705B–5), new future-value incentive plans, and other similar compensation arrangements charged when accrued; and

(4) Job perquisites and other forms of compensation not covered elsewhere in this definition but reported as income under the Internal Revenue Code and its interpretive regulations and rulings.

(c) Employer contributions or costs for the following fringe benefit items:

(1) Pay for time not worked (e.g., paid vacations and holidays, sick leave and other paid leave);

(2) Saving and thrift plans such as qualified stock bonus plans, qualified profit-sharing plans, employee stock-ownership plans, and other qualified defined-contribution plans;

(3) Qualified defined-benefit retirement plans;

(4) Health benefit plans; and

(5) Life insurance, accident insurance, legal assistance, educational assistance, and other plans resulting in benefits to employees but not reported as income. Pay does not include overtime wages as long as the conditions of that pay are unchanged. Also, pay does not include employer contributions for legally-mandated benefit programs.

§ 705.73 Pay rate.

An employee unit's pay rate in any quarter should be determined in a manner consistent with the employer's accounting practices. Pay rates should be constructed as pay per straight-time hour worked. Pay rates should be the average rates for the employee unit over the quarter or as of the last customary pay period within the quarter. When employer costs for certain pay elements are incurred irregularly (for example, bonus payments and vacation pay) these items should be included according to the pay programs in effect at the end of the quarter and should be included in pay-rate computations as though they were incurred evenly over time. For employees not compensated on an hourly basis, an estimate of straight-time hours worked should be made and applied consistently. The method used to compute pay rates must be applied consistently in all measurement periods.

§ 705.74 Product.

A product is a category of goods and/or services that is established by the compliance unit for purposes of complying with the price standard. These groupings should be established in such a manner that the measured price changes for each product reasonably reflect the changes in the prices of the individual goods and services contained within the category. The method of establishing product groups must be applied consistently in all measurement periods.

§ 705.75 Product price.

The price of a product during a quarter is computed by dividing the revenues from sale or lease of the product by the number of units sold or leased. Prices may be measured at the end of a calendar or fiscal quarter only if prices have remained substantially unchanged during the quarter. A product price may be determined from a sample of the individual goods and services in the product category, in which case the sampling methods must follow sound statistical procedures. List prices may be used only if percentage changes in these prices are representative of percentage changes in actual transaction prices.

§ 705.76 Profit margin.

A compliance unit's profit margin is the ratio of profit to net sales and/or revenues.

(a) Profit is defined as the sum of item 14 and items 11 through 13 minus items 7 through 10 in 17 CFR 210.5–03. Briefly, profit is "income or loss before income tax expense" minus dividend income, interest or profit on securities, and miscellaneous other income, plus interest and amortization of debt discount and expense, losses on securities, and miscellaneous income deductions. The profits on goods and services excluded from calculations under § 705.4 should not be excluded in the calculation of profits.

(b) Net sales and/or revenues consist of net sales of tangible products (gross sales less discounts, returns, and allowances), operating revenues of public utilities, and other revenues such as royalties, rents, and the sale of services and intangible products (e.g., engineering, research and development, and other professional services). This definition is consistent with 17 CFR Section 210.5–03, items 1A, 1B, and 1C. The revenues from goods and services excluded from calculations under § 705.4 should not be excluded in the calculation of net sales and/or revenues.

§ 705.77 Second program year.

The second program year is the one-year period immediately following the compliance unit's first program year.

§ 705.78 Two-year price change.

The two-year price change is the sales-weighted average of the percentage changes in product prices from the base quarter to the corresponding quarter of 1980. It may be computed using the following formula:

$$TYPC = \left[\left(\sum_i S_i \times \left(\frac{P_i(80)}{P_i(78)}\right) - 1.0\right) \times 100\right]$$

where

TYPC = the price change over the first two program years;

$P_i(80)$ = the price of the ith product in the 1980 quarter corresponding to the base quarter;

$P_i(78)$ = the price of the ith product in the base quarter;

S_i = ith-product sales share (i.e., the ith-product sales divided by total sales) in the base quarter; and

$\sum_i$ = the summation sign, where the subscript i runs over all products not excluded in 705A-4.

The choice of fiscal or calendar quarters must be consistent throughout the compliance unit's calculations. If seasonal factors are important, the weights, Si, can be calculated using data for the entire base year. Alternatively, the same weights used to calculate the base-period price change can be used. The weights used to calculate actual price changes in the second program year should be consistent with those used in the first program year.

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6 CFR Part 706

Procedural Rules

AGENCY: Council on Wage and Price Stability.

ACTION: Final Procedural Rules.

SUMMARY: On August 17, 1979, the Council published proposed revised procedures and solicited public comment on those procedures as well as on all other aspects of the administration of the pay and price standards (44 FR 48632). After considering the comments received, the Council further modified and published the procedures in interim final form on October 2, 1979 (44 FR 56910). Again, comments were requested. The Council has reviewed the comments received, and the procedures, with minor modifications, are now adopted in final form.

EFFECTIVE DATE: October 1, 1979.

ADDRESS: Questions regarding the Council's procedures should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Jane Campana (202) 456-6210.

SUPPLEMENTARY INFORMATION: Analysis of comments and changes: The Council received approximately a dozen comments on the interim final procedural rules. Several commented favorably on the Council's responsiveness to previously offered suggestions. Others reiterated the arguments made in their comments on the proposed procedures. These latter arguments were discussed in detail in the narrative to the interim final procedural rules (44 FR 56910).

The most prevalent suggestion for further modification was that the Council's procedures should provide additional time for filing reports, responding to Notices of Probable Noncompliance, and the like. As we stated in the narrative accompanying the interim final procedural rules, extensions of time will be granted for good cause; thus, there is no basis for enlarging the time periods provided. Similarly, the Council's reasons for permitting companies to reorganize for compliance purposes at the beginning of, but not during, the second program year have already been discussed in detail, as have our reasons for not imposing a time limitation on the processing of exceptions.

Certain changes are, however, being made. As noted in the narrative to Part 705, we are including language in § 706.37 that permits modifications to exceptions to reflect documented extraordinary improvements in productivity that are demonstrably attributable to unusual capital expenditures. We have also corrected typographical errors in the cross-referencing to sections within this Part and provided more specific references to sections in Part 707 where appropriate. In addition, we note that certain of the reporting forms referred to directly or indirectly in Part 706 (PAY-1, PAY-2, CO-1 (Pay), and CO-1 (Price)) have been submitted to the Office of Management and Budget for forms clearance. Any modifications in form numbers or in the reponse dates resulting from the forms clearance process will be incorporated later into this Part.

Issued in Washington, D.C., November 1, 1979.

R. Robert Russell,

Director, Council on Wage and Price Stability.

Accordingly, 6 CFR Part 706 is revised to read as follows:

PART 706—PROCEDURAL RULES

Subpart A—General Provisions

Subpart B—Reports and Notifications

Subpart C—Requests for Approval of Exceptions

Subpart D—Special Investigations

Subpart E—Determination of Noncompliance

Subpart F—The List of Noncompliers

Subpart G—Reconsideration

Authority: Council on Wage and Price Stability Act, Pub. L. 93-387 (August 24, 1974), as amended by Pub. L. 94-78 (August 9, 1975) and Pub. L. 95-121 (October 5, 1977), 12 U.S.C. 1904 note; as last amended by Pub. L. 96-10 (May 10, 1979); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979).

Subpart A—General Provisions.

§ 706.1 Purpose and scope.

This Part establishes procedures to be used in proceedings before the Council relating to the pay and price standards set forth in Part 705 of this Chapter.

(a) Subpart A concerns definitions and general procedural rules.

(b) Subpart B concerns the submission of reports and notifications.

(c) Subpart C concerns requests for approval of exceptions to the standards.

(d) Subpart D concerns special investigations regarding the standards.

(e) Subpart E concerns determinations of noncompliance with the standards.

(f) Subpart F concerns the placement on and removal from the list of noncompliers.

(g) Subpart G concerns requests for reconsideration of Council actions under Subparts C and E.

§ 706.2 Definitions.

(a) "Company," "compliance unit," "net sales or revenues," "first program year," and "second program year" have the same meanings as in Subpart 705D of this Chapter.

(b) "Collective-bargaining unit" means an employee unit that is a party to a collective-bargaining agreement.

(c) "Council" means the Council on Wage and Price Stability.

(d) "Employee unit" has the same meaning as in Section 705B-2 of this Chapter.

(e) "Hearing Officer" means a person designated by the Council to conduct a hearing.

(f) "Notice of Probable Noncompliance" means a written statement by the Council that a compliance unit or employee unit may be out of compliance with the standards.

(g) "Person" means any compliance unit, employee unit, collective-bargaining unit, company, individual, group, or organization.

(h) "Standards" means the voluntary pay and price standards set forth in Part 705 of this Chapter.

(i) "Undue hardship" and "gross inequity" have the same meanings as in § 705.6 of this Chapter.

§ 706.3 Appearances before the Council.

A person may take any action permitted by this Part on his or her own behalf, or may be represented by any person who he or she designates.

§ 706.4 Actions by the Council.

The Chairman of the Council, or his designee, is authorized to take actions for the Council unde this Part.

§ 706.5 Submission of documents.

(a) Submissions should be sent to the Council on Wage and Price Stability, The Winder Building, 600 17th Street NW., Washington, D.C. 20506.

(b) Submissions should be signed by the chief executive officer or authorized designee of a company, compliance unit, employee unit, collective-bargaining unit, or other organization.

(c) Each submission should be plainly marked at the top of the document indicating whether it is a "Report," "Request for Extension of Time," "Request for Exception—(Pay) or (Price)," "Response to Notice of Probable Noncompliance," "Request for Reconsideration," or "Request for Removal from List of Noncompliers."

§ 706.6 Confidential material.

Material for which confidentiality is sought should be submitted in accordance with Part 702 of this Chapter and will be treated as there provided. When submissions (other than forms confidential in their entirety, such as PM-1 and Pay-1) contain confidential information, two copies should be submitted. One copy, containing the confidential information, is for the Council's use and should be clearly marked "Contains Confidential Information." The other copy, from which any confidential information should be deleted, is to meet public disclosure requirements.

§ 706.7 Service of documents.

All documents served under this Part are to be served personally or by U.S. mail on the person specified in these regulations or his or her designated representative.

§ 706.8 Computation of time.

Except as otherwise provided, any period of time specified in this Part is counted in business days (all days other than Saturdays, Sundays, and Federal holidays), beginning with the first business day after the Council takes any action. If the document setting forth the Council's action is sent by mail, three additional days may be added.

§ 706.9 Extension of time.

If an action is required under this Part to be taken within a prescribed period of time, an extension of time will be granted only upon a showing of good cause. Requests for extensions should be made in writing to the Office of General Counsel.

§ 706.10 Consolidations.

The Council may consolidate separate matters if consolidation will expedite the proceedings or otherwise assist the Council in carrying out its functions.

Subpart B—Reports and Notifications

§ 706.20 Purpose and scope.

(a) This Subpart concerns the submission of reports and notifications requested by the Council.

(b) A person that has furnished the Council with data requested and retained by the Council need not resubmit such data, but should identify for the Council the document (including page references) containing such data and the date on which it was submitted.

§ 706.21 Submissions on company organization for purposes of compliance.

(a) *Reorganization for Second Year.* A company may reorganize its compliance units and employee units for purposes of compliance with the price and pay standards, respectively, at the beginning of its second program year but not during the year.

(b) *Company Organization for Price Compliance.* A compliance unit that had, or that is part of a company that had, net sales or revenues of $250 million or more in its last complete fiscal year before October 2, 1979, and any other company designated by the Council, should furnish the Council by December 1, 1979, with the information specified in § 707.1(a).

(c) *Company Organization for Pay Compliance.* A company that had 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979, and any other company designated by the Council, should furnish the Council by December 1, 1979, with the information specified in § 707.1(b).

§ 706.22 Periodic data submissions.

(a) *Form PM-1.* A compliance unit that had, or is part of a company that had, net sales or revenues of $250 million or more in its last complete fiscal year before October 2, 1979, and any other compliance unit designated by the Council, should furnish the Council with the data specified on Form PM-1. These submissions should by made not more than 45 calendar days after the end of each of the first three quarters and 60 calendar days after the end of the second program year.

(b) *Form PAY-1.* A compliance unit that had 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979, and any other compliance unit designated by the Council, should furnish the Council

the data specified on Form PAY–1. Data or prospective compliance with the second-year pay standard should be filed no later than March 31, 1980. Data on actual pay-rate increases for the second program year should be filed within 60 calendar days after the end of the second program year.

§ 706.23 Submissions by State and local governments.

State and local governments with 5,000 or more employees should submit:

(a) By December 1, 1979, a statement of assurance by the head of the government entity that the entity intends to comply with the pay standard; and

(b) The data specified in § 707.10(c) for formal pay plans in operation as of October 1, 1979, within 60 calendar days after the end of the pay plan year.

Subpart C—Requests for Approval of Exceptions

§ 706.30 Purpose and scope.

This Subpart concerns requests by a compliance unit or employee unit for the Council's determination that an exception to the pay or price standard is warranted under Part 705.

§ 706.31 Who should request approval.

(a) Any compliance unit or employee unit that intends to apply one or more of the exceptions specified in § 706.32 should request a determination from the Council that the exception is warranted, if:

(1) The request relates to the price standard and the compliance unit had, or is part of a company that had, net sales or revenues of $250 million or more in its last complete fiscal year prior to October 2, 1979; or

(2) The request relates to the pay standard, and

(i) The affected employee unit consists of 100 or more employees in a compliance unit with (or that is part of a company with) 1,000 or more employees, or

(ii) The affected collective-bargaining agreement covers 1,000 or more employees, regardless of the number of employees in an individual company's employee units.

(b) Any compliance unit or employee unit not covered by (a) may request a determination that an exception to the pay or price standard is warranted if such unit shows that there is good cause for the Council to entertain such a request.

(c) A compliance unit or employee unit not covered by paragraphs (a) or (b) of this section is expected to self-administer the exceptions in a manner consistent with the standards. A compliance unit or employee unit should retain all data and documents that constitute the basis for the exception in a form suitable for review by the Council.

(d) If a compliance unit or employee unit was granted an exception to the pay or price standards for the first program year and wants to continue that exception for the second program year, it should submit a new request for approval of the exception. The new request need not include data previously supplied, but it should demonstrate that the previously granted exception continues to be appropriate.

§ 706.32 Grounds for exceptions.

The grounds for an exception to the price standard are contained in § 705.6 and § 705.41. The grounds for an exception to the pay standard are contained in Sections 705B–9 through 705B–12.

§ 706.33 Contents of the request.

(a) A Request for approval of an exception should be in writing and include data sufficient to demonstrate that the grounds for an exception are met.

(b) The request for approval of an exception should not exceed 15 typewritten pages, exclusive of supporting documents.

(c) If a decision by the Council is required by a certain date, that date should be clearly and conspicuously noted in the request. If the specified date for a decision is within 30 calendar days of the submission of a completed request for an exception, the request should explain the basis for requesting an expedited decision.

§ 706.34 Notice to interested persons.

(a) The Council may notify any person who could be significantly affected by approval of an exception that his written comments should be submitted within ten days. Submission of comments to the Council does not make the person a party to the proceeding.

(b) Any person submitting written comments to the Council about a request submitted under this Subpart should serve a copy of the comments (or a copy from which confidential information has been deleted, provided that it is adequately summarized) upon the compliance unit or employee unit making the request, and should certify to the Council that this requirement has been met. The Council may notify other interested persons of such comments and provide an opportunity to respond.

§ 706.35 Additional information.

(a) The Council may at any time request such additional information as it deems necessary to reach a determination, and may set a reasonable deadline for the submission of such information.

(b) A request for approval of an exception may be denied if the information called for under §§ 706.33 or 706.35(a) is not provided.

§ 706.36 Conferences.

Any person requesting approval of an exception may request a conference. If the Council determines that a conference is appropriate, it will contact the applicant to arrange a suitable time and location. At its discretion, the Council may invite other interested persons to attend portions of conferences at which confidential material will not be discussed.

§ 706.37 Decision.

(a) The Council will issue a written determination granting or denying a request for approval of an exception as promptly as possible, giving consideration to any showing of urgency under § 706.33(c).

(b) When the Council grants a request for approval of an exception, it may modify the exception to make allowances for documented extraordinary improvements in productivity that are demonstrably attributable to unusual capital expenditure programs, and it may condition the exception in any manner that promotes the objectives of the standards.

(c) The Council's decision will be based on the facts and arguments before it on the date of the decision. If a person relies on certain facts and arguments to support a request for approval of an exception, he may not later rely on substantially the same set of facts and arguments in a new exception request.

Subpart D—Special Investigations

§ 706.40 Purpose and scope.

This Subpart concerns special investigations by the Council relating to particular companies, compliance units, or employee units. Additional investigatory procedures are set forth in Part 704.

§ 706.41 Investigational policy.

The Council may at its discretion conduct special investigations to examine significant pay and price increases and compliance with the standards. A special investigation may be initiated when the Council's examination of publicly available pay or price indices or the receipt of other information indicates the possibility of pay or price increases in excess of the

respective standard for a compliance unit or in a sector of the economy.

§ 706.42 Requests for information.

The Council may request information relating to a compliance unit's specific price actions, its average price increases, its pay programs, or any other information relating to the standards. Any such request will be accompanied by a statement of the purpose of the request and the Council's need for the information.

Subpart E—Determination of Noncompliance

§ 706.50 Purpose and scope.

This Subpart concerns the determination of whether compliance units or employee units are in compliance with the standards.

§ 706.51 Notice and reply.

(a) *Notice of Probable Noncompliance.* When the Council has reason to believe that a compliance unit or employee unit may not be in compliance with the standards, it will send a Notice of Probable Noncompliance to the compliance unit and, if the alleged noncompliance relates to a collective-bargaining situation, to any affected collective-bargaining unit.

(b) *Reply.* (1) Within ten days after a Notice of Probable Noncompliance has been issued, the compliance unit and any collective-bargaining unit to which the notice is issued may file a written reply disputing information in that notice, presenting additional information relevant to the allegations in the notice, and raising any available defense.

(2) Available defenses are that any of the exceptions in §§ 705.6, 705B–9 through B–12, and 705.41 are applicable or have been properly self-administered, or that the standards do not properly apply.

(3) The reply may request a conference and, if so, indicate whether any confidential data may be discussed.

(c) If a compliance unit and any collective-bargaining unit to which the notice is issued does not timely reply, the Council may issue a determination of noncompliance.

(d) The Council may request comments from any person concerning the notice, but submitting such comments does not make that person a party to the proceeding.

(e) If a conference is requested, the Council will arrange a suitable time and location.

§ 706.52 Decision.

(a) After considering the record, which shall consist of relevant data developed by the Council and material submitted to the Council, the Council will inform the compliance unit and collective-bargaining unit, if applicable, of the Council's conclusions and the reasons therefor.

(b) Whenever the Council has concluded there is noncompliance, it may consider any corrective action offered by the compliance unit or employee unit. If the Council is satisfied that appropriate corrective action will be initiated promptly, the Council will not find the compliance unit or employee unit out of compliance.

(c) After the Council has considered all relevant information, it will set forth in writing the reasons for its decision.

Subpart F—The List of Noncompliers

§ 706.60 Purpose and scope.

This Subpart concerns placement on and removal from the list of noncompliers.

§ 706.61 Listing of Noncompliers.

(a) If the Council issues a decision finding a compliance unit out of compliance in accordance with § 706.53(c), it will place the compliance unit's name on a list of noncompliers no sooner than eight days after its decision.

(b) If the listing of a compliance unit has been stayed pending reconsideration in accordance with § 706.76, and the compliance unit is found on reconsideration to be out of compliance, it will be listed no sooner than three days after the reconsideration decision.

§ 706.62 Removal from list of noncompliers.

(a) Any compliance unit that has been placed on the list of noncompliers may request, in writing, that the Council remove it from the list on grounds that the compliance unit has come into compliance with the standard. Any such request should be submitted to the Director. It should state the corrective action that the compliance unit has taken, explain how that action brings the compliance unit into compliance, and indicate whether a conference or hearing is requested.

(b) The Council will provide a conference and, if a disputed substantial and material question of fact is presented, a hearing in accordance with § 706.75 (b) through (d).

(c) The Council will advise the compliance unit as promptly as possible after receipt of any request under paragraph (a) of this section (or after the completion of any conference or hearing) as to whether the request has been granted or denied. If granted, removal from the list will be effective immediately, and a notice to that effect will be published promptly in the same manner as the publication of the list of noncompliers. If denied, the compliance unit will have exhausted its administrative remedies, and no further reconsideration of the facts or compliance plan presented will be available under Subpart G.

Subpart G—Reconsideration

§ 706.70 Purpose and scope.

This Subpart concerns reconsideration of Council actions taken under Subparts C or E.

§ 706.71 General.

(a) Any person who has or could have participated in a matter under Subparts C or E of this Part may request reconsideration of the Council's decision within seven days of the Council's action.

(b) Additional facts that were not before the Council at the time of the initial decision may be presented at the time of reconsideration. If a person relies on certain facts and arguments to support a request for reconsideration, he may not later rely on substantially the same set of facts and arguments in a new request for reconsideration.

(c) A person who has participated or could have participated in a matter under Subparts C or E of this Part will not have exhausted his administrative remedies until he has submitted a request for reconsideration under this Subpart and final action on that request has been taken by the Council.

§ 706.72 Contents of the request.

A request for reconsideration should:
(a) contain a concise statement of the requested relief and any factual, legal, or policy basis for such relief; and

(b) specify whether a conference and/or hearing as provided by §§ 706.73 and 706.74 is requested, and, if so, whether confidential data will be discussed; and

(c) if a hearing is requested, identify the substantial and material questions of fact presented.

§ 706.73 Conference on reconsideration.

(a) The Council will, if requested, provide a conference on reconsideration of an action under Subparts C and E.

(b) The Council will notify the requesting party and, in the Council's discretion, other interested persons of the time and place for the conference.

(c) Any subject relevant to the exception or noncompliance decision may be discussed at the conference.

§ 706.74 Hearing on reconsideration.

(a) If a disputed substantial and material question of fact is presented, the Council will, if requested, provide a hearing on reconsideration of an action under Subpart E.

(b) If the Council determines that a hearing is appropriate, it will notify the person requesting the hearing and, in the Council's discretion, other interested persons. Thereafter, the hearing will be promptly scheduled before a Hearing Officer at such time and place as the Council may direct.

(c) A hearing conducted in accordance with this Section may include the submission of such additional evidence and arguments as the Hearing Officer permits.

(d) Within 20 days after the close of the hearing, the Hearing Officer will submit to the Council findings of fact on each substantial and material question of fact. The Council will promptly send a copy of the report to the person who requested the hearing.

§ 706.75 Decision.

(a) Within 20 days of receipt of a request for reconsideration, or within 20 days after the conclusion of any conference under Section 706.73, or within 20 days after receipt of a Hearing Officer's findings under § 706.74, the Council will issue a decision affirming, modifying, or reversing its earlier action.

(b) The Council's decision will be in writing and will set forth the reasons on which it is based. Copies of the decision will be served on the person requesting reconsideration.

§ 706.76 Stays pending reconsideration.

A request for reconsideration submitted within seven days of the Council's decision of noncompliance under § 706.53 will stay the placing of a compliance unit's name on a list of noncompliers pending the deposition of the request.

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Tuesday
November 6, 1979

Part X

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act; Job Corps Program

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 675 and 684

Job Corps Program Under Title IVB of the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rules with requests for comments.

SUMMARY: This document contains final rules for the Job Corps program under the Comprehensive Employment and Training Act. The purpose of these rules is to implement the changes made by the Comprehensive Employment and Training Act Amendments of 1978.

DATES: Effective date of these rules is November 6, 1979. Comments on the final rules are requested by January 7, 1980.

ADDRESS: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213, Attention: Robert Taggart, Administrator, Office of Youth Programs.

FOR FURTHER INFORMATION CONTACT: Raymond E. Young, Director, Office of Job Corps and Young Adult Conservation Corps, Telephone: 202–376–6995.

SUPPLEMENTARY INFORMATION: The Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524) was signed into law on October 27, 1978.

Job Corps is designed to provide education, vocational training and a variety of support services needed to prepare eligible youth to become more responsible, productive and employable.

Administrative Provisions

Because Job Corps utilizes contractors to operate its centers and does not use grants through prime sponsors for this purpose, the majority of the regulations covering administrative provisions of the Act (20 CFR Part 676) do not apply. Those which do apply are cited in the regulations in Subpart A, Part 684. Other regulations governing the administration of the Job Corps program are cited elsewhere in Part 684.

Pay and Allowances

A major change in the new law as it concerns Job Corps is the provision in section 458 of the Act for increases in the living and readjustment allowances for corpsmembers and the allotments they are authorized to send to dependents. These regulations do not state the amount of allowances and allotments because the amount of funding which will be available for them has not yet been decided. The regulations reflect only the methods which are to be used to make these payments. When money is available, the amounts and the policies governing corpsmembers' receipt of such increases will be published as a notice in the Federal Register.

Day Care Services

The Act specifically allows the Department to provide day care services for the children of eligible youths (section 402(a)). Many youths with dependent children both need and can benefit from the Job Corps but are prevented from enrolling because adequate child care is unavailable. These regulations allow centers and regional offices to propose the establishment of day care services for both resident and nonresident corpsmembers, and encourage the establishment of cooperative relationships with other agencies engaged in similar activities, including joint funding whenever possible.

Medical Personnel

The prior regulations permitted the Job Corps centers to use only health professionals who were certified, licensed or accredited in the State in which the center was located. The Department has found, however, that such health professionals are sometimes not available, especially for centers at remote and isolated locations. The new regulations provide that, when necessary for the provision of health services required by the regulations, the regional office, on a case-by-case basis, may permit the use of health professionals who are certified, licensed or accredited in any State. This regulation will pre-empt State law in some States. The Department, therefore, is especially interested in comments from Governors and State health officials on this regulation.

State Taxation

Section 466(c) of the Act, as amended, states that transactions conducted by private for-profit contractors with respect to Job Corps centers which they are operating on the Secretary's behalf are not to be considered as generating gross receipts. The purpose of this provision is to clarify that such private for-profit contractors are not subject to State gross receipts and similar taxes with respect to such transactions because of the special legal relationship between such contractors and the Secretary. Such contractors carry out the statutory function mandated to the Secretary by the statute, namely, the education and training of corpsmembers who themselves are Federal employees for several purposes. See section 465 of the Act. The intent of the new statutory provision was to clarify long-standing legal relationships. Consequently, the provision should be interpreted as retroactive and as negating, with respect to Job Corps, any contrary conclusions of law.

Concurrent Criminal Jurisdiction

The CETA amendments of 1978 added a new provision at section 464(d) of the Act. Section 464(d) provides that all property, which would otherwise be under exclusive Federal legislative jurisdiction, shall be under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement as long as a Job Corps center is located on such property. States and their local governments have had concurrent criminal jurisdiction with the Federal Government over property which was purchased by the Federal Government since the early 1940s. Many Job Corps centers, however, are on property which has been owned by the Federal Government since before that time. The new provision grants to the States concurrent jurisdiction with respect to such properties as long as Job Corps centers remain on such properties. The new regulations authorize the Job Corps Director to assist in negotiating law enforcement agreements between Federal and State law enforcement agencies with respect to Job Corps centers on such properties.

Other Changes

Various revisions have been made throughout for purposes of clarification, to shorten the time period between initial application and date of enrollment, and to make other less substantive programmatic and administrative changes.

The Department of Labor's regulation at 29 CFR 2.7 states that it is the policy of the Department of Labor to use proposed rulemaking procedures when issuing regulations for grant programs. The Secretary, however, in signing this document, is waiving the regulation at 29 CFR 2.7 because Section 4(a)(2) of the CETA Amendments Act of 1978 requires that CETA, as reauthorized, be implemented by April 1, 1979.

Nevertheless, even though this document contains final rules, the Department, in keeping with the spirit of

29 CFR 2.7, is requesting comments on these final rules. Changes in these rules may be made at a later date, depending upon the extent and nature of any comments.

Accordingly, title 20 of the Code of Federal Regulations, Chapter V, is amended as follows:

PART 675—INTRODUCTION TO THE REGULATIONS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

1. By amending § 675.3, *Table of contents for the regulations under CETA,* by adding the table of contents for Part 684 to read as follows:

§ 675.3 Table of Contents for Regulations Under CETA.

* * * * *

PART 684—JOB CORPS PROGRAM UNDER TITLE IVB OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart A—Purpose and Scope

Sec.
684.1 General.

Subpart B—Definitions

684.10 Definitions.

Subpart C—Funding, Site Selection and Facilities Management

684.20 Available funds.
684.21 Eligibility for funds and eligible delivers.
684.22 Funding procedures.
684.23 Center performance measurement.
684.24 Site selection and facilities management.
684.24a Historical preservation.
684.25 Capital improvement.
684.26 Protection and maintenance of facilities owned or leased by Job Corps.
684.27 Facilities surveys.

Subpart D—Job Corps Participant Enrollment, Transfers, Terminations, and Placement

684.30 Recruitment and screening of corpsmembers.
684.31 Selection, assignment, and enrollment of corpsmembers.
684.32 Enrollment by readmission.
684.33 Transfers.
684.34 Extensions of enrollment.
684.35 Federal status of corpsmembers.
684.36 Terminations.
684.37 Exit procedures.
684.38 Certificate of attainment.
684.39 Transportation.
684.40 Placement and job development.

Subpart E—Center Operations

684.50 Reception and orientation.
684.51 Corpsmembers handbook.
684.52 Job Corps basic education program.
684.53 Vocational training.
684.54 Occupational exploration program.
684.55 Scheduling of training.
684.56 Certification and/or licensing.
684.57 Purchase of vocational supplies and equipment.
Sec.
684.58 Work experience.
684.59 Leisure time employment.
684.60 Health care and services.
684.61 Physical standards and medical evaluations.
684.62 Ocular care.
684.63 Immunization.
684.64 Communicable disease control.
684.65 Dental care.
684.66 Pregnancy.
684.67 Mental health.
684.68 Drug use and abuse.
684.69 Sex-related issues.
684.70 Death.
684.71 Reporting critical medical situations.
684.72 Residential support services.
684.73 Recreation/avocational programs.
684.74 Laundry, mail, and telephone service.
684.75 Counseling.
684.76 Intergroup relations program.
684.77 Incentives system.
684.78 Corpsmember government and leadership program.
684.79 Corpsmember welfare association.
684.80 Evaluation of corpsmember progress (maximum benefits system).
684.81 Food service.
684.82 Allowances and allotments.
684.83 Clothing.
684.84 Tort and other claims.
684.85 Federal employee's compensation.
684.86 Social security.
684.87 Income taxes.
684.88 Emergency use of personnel, equipment, and facilities.
684.89 Limitations on the use of corpsmembers in emergency projects.
684.90 Corpsmember absences.
684.91 Legal services to enrollees.
684.92 Voting rights.
684.93 Rights relative to religion.
684.94 Right to privacy.
684.95 Disclosure of information.
684.96 Disciplinary procedures and appeals.
684.97 [Reserved].
684.98 Cooperation with agencies and institutions.
684.99 Job Corps training opportunities for CETA grantees.

Subpart F—Applied Vocational Skills Training (VST) Through Work Projects at Civilian Conservation Centers

684.100 Applied vocational skills training (VST) projects.
684.101 Annual VST plans.
684.102 VST project proposals.
684.103 VST project review and approval.
684.104 Modification of approved VST projects.
684.105 Cancellation or deferment of approved VST projects.
684.106 VST budgeting.
684.107 Monitoring of VST program progress.
684.108 Public identification of VST projects.
684.109 Supplementation of VST project funds.

Subpart G—Experimental Projects

684.110 Experimental projects.

Subpart H—Administrative Provisions

684.120 Program management.
684.121 [Reserved].
684.122 Staff training.
Sec.
684.123 Corpsmember records management.
684.124 Safety.
684.125 Environmental health.
684.126 Security and law enforcement.
684.127 Job Corps forms and documents.
684.128 Property management and procurement.
684.129 Imprest and petty cash funds.
684.130 Contract center financial management and reporting.
684.131 Federally operated CCC's financial management and reporting.
684.132 Audit.
684.133 General reporting requirements.
684.134 Review and evaluation.
684.135 State taxation of Job Corps contractors.

Subpart J—A-95 Procedures

684.140 Notification of intent.
684.141 Content and description of notification of intent.
684.142 Review of comment.

2. By adding a new Part 684 to read as follows:

PART 684—JOB CORPS PROGRAM UNDER TITLE IVB OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart A—Purpose and Scope

Sec.
684.1 General.

Subpart B—Definitions

684.10 Definitions.

Subpart C—Funding, Site Selection and Facilities Management

684.20 Available funds.
684.21 Eligibility for funds and eligible deliverers.
684.22 Funding procedures.
684.23 Center performance measurement.
684.24 Site selection and facilities management.
684.24a Historical preservation.
684.25 Capital improvements.
684.26 Protection and maintenance of contract center facilities owned or leased by Job Corps.
684.27 Facilities surveys.

Subpart D—Job Corps Participant Enrollment, Transfers, Terminations, and Placement

684.30 Recruitment and screening of corpsmembers.
684.31 Selection, assignment, and enrollment of corpsmembers.
684.32 Enrollment by readmission.
684.33 Transfers.
684.34 Extensions of enrollment.
684.35 Federal status of corpsmembers.
684.36 Terminations.
684.37 Exit procedures.
684.38 Certificate of attainment.
684.39 Transportation.
684.40 Placement and job development.

Subpart E—Center Operations

684.50 Reception and orientation.
684.51 Corpsmembers Handbook.
684.52 Job Corps basic education program.

Authority. Sec. 126 of the Comprehensive Employment and Training Act (29 U.S.C. 801 *et seq.*), unless otherwise noted.

Subpart A—Purpose and Scope

§ 684.1 General.

(a) The purpose of this Part is to delineate the policies, rules, and regulations that govern the operation of the Job Corps program, authorized under Title IVB of the Act. Job Corps is one of a broad range of programs for youth provided for in Title IV. Job Corps centers are located in both rural and urban areas and provide training, education, residential and a variety of other support services necessary to prepare corpsmembers to become more responsible, productive, and employable (section 450).

(b) Only the following provisions of 20 CFR 676 apply to the Job Corps program and then only to the extent that they do not conflict with the provisions of this Part:

(1) Sections 676.61 through 676.74, pertaining to fraud and program abuse, exept that where the words "recipient" or "subrecipient" are used, the words "center operator" shall be subsituted;

(2) Sections 676.81, 676.82, and 676.85 through 676.90, pertaining to complaints, investigations, and sanctions except that:

(i) Complaints may be filed with DOL without exhaustion of any other procedures; and

(ii) Whenever these sections use the words "grant officer," there shall be substituted the words "Job Corps Director."

(c) Definitions for terms used in this Part may be found in subpart B. Statutory authority for these regulations may be found in section 126(a)(1) of the Act. Applicable statutory provisions, other than section 126(a)(1), are generally noted in this Part.

Subpart B—Definitions

§ 684.10 Definitions.

"Academic credit." Credit for education, training, or work applicable toward a secondary school diploma, a post secondary degree, or an accredited certificate of completion, consistent with applicable State law and the requirements of an accredited educational agency or institution.

"Accountability, relief of." DOL approval that authorizes the deletion or disposal of property items from the records of a contractor or of a governmental agency that operates a Job Corps center or of a recruitment, screening, and placement agency.

"Accountability system." The center operator's system of monitoring corpsmember attendance, physical location, and status; e.g., leave, pass, etc.

"Act." The Comprehensive Employment and Training Act.

"Appraised value." The estimated market value of a project. When a project has been completed primarily by corpsmembers as a vocational skills training project, the appraised value shall be calculated as if the project had been done by formal contract methods.

"AWOL." For resident corpsmembers, the unauthorized absence of a corpsmember without official leave in excess of 24 continuous hours. For nonresident corpsmembers, the continuous unauthorized absence for 1 full day of center training.

"Capital improvement." Any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset"; and

(3) The cost of which increases the recorded value of the existing building, structure, or major item of equipment and is subject to depreciation.

"Capital outlay funds." Funds other than center operational funds provided to centers for approved items of construction, rehabilitation, equipment, and GSA vehicle leases.

"Center." A Job Corps center.

"Center Director." The center's chief administrative officer or his or her designee.

"Center operator." The agency or contractor that runs a Job Corps center under an agreement or contract with DOL.

"Center operational funds." Funds provided by DOL for operating a center, including funds for food, corpsmember clothing, vocational training, education, residential and nonresidential support programs, corpsmember allowances, health care, allotments and travel, staff salaries, center lease costs when applicable, allowable administrative and maintenance costs, and operational supplies and materials.

"Center review board." The group that reviews charges brought against corpsmembers for infractions of center rules.

"Center standards officer." The individual designated by the Center Director to enforce corpsmember standards of conduct.

"Civilian Conservation Center (CCC)." A center operated on public land under an agreement or contract between DOL and another Federal, State, or local governmental entity, a private for profit or nonprofit organization, or an Indian tribe or organization, whose programs are focused on conservation, development, and management of public resources, or development of community projects in the public interest (section 456(a)).

"Community relations council." The group of center and local individuals, including one or more corpsmembers, who meet periodically to promote harmonious relations between the center and the local community.

"Contract centers." Centers administered under a contract between Job Corps and a corporation, partnership, public agency, or similar legal entity, selected according to Federal Procurement Regulations.

"Corpsmember." An individual who has been selected for enrollment in Job Corps shall be officially a corpsmember: For resident corpsmembers, from the date he or she leaves home to begin government-authorized travel to the assigned Job Corps center to the date of scheduled arrival at the official travel destination authorized by the Center Director upon termination from Job Corps. For nonresident corpsmembers, from the time he or she arrives at any center activity or program each day until he or she leaves such activity or program.

"Corpsmember appeal record." The record of a corpsmember's center review board hearing, including all documents pertaining to the case and any additional documents supporting the corpsmember's appeal of a disciplinary discharge.

"Corpsmember council." The group of elected corpsmembers who determine appropriate sanctions for minor infractions of rules, and who are overseen by the center standards officer and the Center Director.

"Corpsmember Handbook." The document given all corpsmembers during orientation that outlines Job Corps center services, rules, and regulations.

"Corpsmember counseling record." The confidential compilation of significant contacts between a corpsmember and counselor or residential advisor along with ancillary information pertaining thereto, which is not a part of the terminated Corpsmember Personnel Record.

"Corpsmember Personnel Record." The record compiled during enrollment and consolidated at a corpsmember's termination that includes the Corpsmember Personnel Folder, containing documents relating to such matters as travel, allowances and allotments, and leave; the record of educational and vocational achievement; and the sealed health record envelope, containing the confidential health record.

"Corpsmember year." A period of time equivalent to a single corpsmember's being enrolled in Job Corps for 1 full year.

"Dispensary." The area of the on-center health facility that serves ambulatory patients (outpatients) as distinct from the on-center infirmary that serves bed patients.

"Disruptive home life." A home life characterized by conditions such as:

The youth's living in an orphanage or other protective institution;

The youth's suffering from serious parental neglect;

The youth's father, mother, or legal guardian being a chronic invalid, alcoholic, narcotics addict, or having another serious health condition.

"DOL." The United States Department of Labor, including its agencies and organizational units.

"Economically disadvantaged." This term is defined at 20 CFR 676.4.

"Eligible deliverer." Any individual or organization that is eligible to receive Federal funds from DOL to establish, operate, or provide service to any Job Corps program or activity.

"Environmental health program." The center program that sees that the center is free from environmental hazards to corpsmember and staff health and safety.

"Family income." This term is defined at 20 CFR 676.4.

"Federal bonding program." Fidelity bonding coverage offered by a State employment service to qualified job applicants who could not otherwise obtain it.

"Finance center." The United States Army Finance and Accounting Center, Indianapolis, Indiana, which under interagency agreement between DOL and the Department of Defense, handles the payment of corpsmember allowances, allotments, and transportation charges.

"Functional evaluation." A combined assessment of a corpsmember by the center health staff, and the residential living, counseling, education, and vocational training staffs, which enables the Center Director to make an informed judgment as to whether the corpsmember should be retained, transferred, or terminated for health reasons.

"In-School." This term is defined at 20 CFR 676.4.

"Imprest fund." A revolving fund issued to another Federal agency by the Treasury Department after such department has approved the agency's request for an imprest fund and its Imprest Fund Cashier, who may then make specified payments from the fund.

"Job Corps center review." A systematic periodic evaluation conducted at individual centers by regional and/or national office personnel to assess the effectiveness of center programs, adherence to Job Corps policies, and compliance with contracts or agreements.

"Leisure-time employment." Part-time paid employment of corpsmembers.

"Lower living standard income level." That income level (adjusted for selected Standard Metropolitan Statistical Areas and regional metropolitan and non-metropolitan differences and family size) determined annually by the Secretary based upon the most recent lower living family budget issued by the Bureau of Labor Statistics.

"Maximum benefits system." A center program to evaluate corpsmember progress and performance and to determine the services necessary for each corpsmember to achieve the maximum benefit from the total Job Corps program.

"Mental health consultant." A fully certified or accredited mental health professional who may be a qualified psychiatrist, clinical psychologist, psychiatric social worker, psychiatric nurse, or other professional whose background, training, and skills are appropriate to the mental health needs of the center.

"National office." The national office of the Department of Labor (DOL), Employment and Training Administration (ETA), Office of Job

Corps and Young Adult Conservation Corps (YACC).

"Occupational code." A code that is contained in a systematic arrangement of jobs according to significant factors involved in the job or group of jobs in accordance with the Dictionary of Occupational Titles.

"Occupational exploration program." The center program whereby a corpsmember is made aware of the vocational training opportunities made available by the center.

"Occupational support services." Activities or services required ancillary to the direct operation of Job Corps, such as recruitment and screening services, union-contracted vocational training and off-center educational training, placement services, certain health services, and miscellaneous logistical services.

"Placement." Terminated corpsmember employment, entry into the Armed Forces, or enrollment in other training or education programs.

"Placement agency." An organization acting pursuant to a contract with or grant from the Job Corps that provides placement services to corpsmembers.

"Poverty level." That annual income level at or below which families are considered to live in poverty, as annually determined by the Office of Management and Budget.

"Program direction funds." Funds provided by the Job Corps to Federal agencies that operate CCC's to cover costs of general administrative services necessary for overall management exclusive of the management of the Centers themselves.

"Progress performance evaluation panel (P/PEP)." The panel of representatives of center program components that convenes periodically as part of the maximum benefits system to evaluate individual corpsmember performance, and to make recommendations to the Center Director.

"Public assistance." Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

"Readjustment allowance." The money accumulated by and reserved for each corpsmember on a monthly basis during tenure in Job Corps that is paid in a lump sum after termination according to the provisions of § 684.82 (h), (i) and (j).

"Regional office." The Job Corps unit of the Employment and Training Administration Regional Office, Department of Labor.

"Regional appeal board." The regional board that considers corpsmember appeals from disciplinary discharges.

"Screening agency." An organization acting pursuant to a contract or agreement with or a grant from the Job Corps that recruits, screens, and enrolls youth into Job Corps.

"Secretary." The Secretary of Labor, or his or her designee.

"Site survey." A survey of a potential site for a Job Corps center that includes a preliminary engineering evaluation of the condition and capacity of existing buildings, pavements, utility systems, installed equipment, and all other real property components as well as a preliminary cost estimate for acquisition of facilities, necessary rehabilitation, modication, and new construction required.

"Spike camp." A temporary residential facility that is established and maintained in support of an off-center vocational skills training project that is too far from the center for commuting.

"State." The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific islands.

"State Employment Security Agency (SESA)." The agency that exercises control over the Unemployment Insurance Service and the Employment Service.

"Substantive screening error." Any error that violates the enrollment criteria specified in these regulations.

"Training achievement record." A Job Corps approved document used to record the step-by-step attainment of specific vocational skills by each corpsmember.

"Transfer." The reassignment of a corpsmember from one center to another.

"Unauthorized goods." Firearms and ammunition; explosives and incendiaries; knives with blades longer than 2"; homemade weapons; all other weapons and instruments used primarily to inflict personal injury; stolen property; drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons.

"Utilization study." A study, which generally follows a site survey after the regional and national offices have agreed, on the basis of the site survey, that the site is potentially favorable for a Job Corps center. The study contains a detailed engineering report on the facility including outline drawings of buildings, proposed capacities and utilization, budget cost estimates for rehabilitation, modification and new construction required, and an estimated time schedule for design and construction. The approved utilization study is that study approved by the Job Corps Director that becomes the basis for scope of work, budget, design, rehabilitation, and construction of facilities for the center.

"Vocational skills training (VST) funds." Funds, distinct from center operational and capital outlay funds, provided for payment of equipment, supplies, and technical assistance for vocational skills training projects.

"Vocational skills training (VST) projects." Activities that provide vocational instruction to corpsmembers through actual construction or improvement of permanent facilities or projects.

Subpart C—Funding, Site Selection, and Facilities Management

§ 684.20 Available funds.

The Secretary shall determine the amount of funds that shall be made available in any fiscal year for the operation of the Job Corps program, pursuant to sections 112(a)(4)(A)(B), and 468 of the Act.

§ 684.21 Eligibility for funds and eligible deliverers.

(a) Funds shall be made available by the Secretary to eligible deliverers for the operation of Job Corps centers and for the provision of Job Corps operational support services. The amount of funds to be provided for the operation of individual centers and for operational support services shall depend upon the number of corpsmembers or applicants to be served, the size and type of center, the mix of services to be provided, and such other factors as may be pertinent to a determination.

(b) Eligible deliverers for the operation of centers and for the operational support services necessary to center operation shall be units of Federal, State, and local government, State and local public agencies, private for-profit and non-profit organizations, and Indian tribes and organizations.

§ 684.22 Funding procedures.

(a) Contracting officers shall request proposals for the operation of all centers and for provision of operational support services, either directly from Federal agencies or pursuant to Federal Procurement Regulations for work to be done under contract. The request for proposal for each center or for each operational support service contract shall describe specifications and standards unique to the operation of the

center or for the provision of operational support services.

(b) Job Corps center operators shall be selected and funded on the basis of proposals received, including sole source proposals, according to the following criteria as appropriate:

(1) The degree to which the proposal demonstrates understanding of the objectives of the program (Design of Program);

(2) The quality of proposed recruitment and placement support;

(3) The quality of proposed educational training;

(4) The quality of proposed vocational training;

(5) The quality of proposed residential and other corpsmember support services;

(6) The quality of proposed administrative support services;

(7) Past demonstrated effectiveness in the operation of a Job Corps center or similar activity;

(8) The quality of proposed staff;

(9) The degree to which minority subcontractors will be utilized;

(10) The relative price advantage to the government; and

(11) The ability and intention to adhere to these regulations, the requirements of the Act, and other applicable law.

(c) The delegated contracting officer of the DOL, ETA, shall negotiate with eligible deliverers for operational support services on the basis of the criteria developed for each specific service to be rendered. Such criteria shall be listed in the request for proposals.

(d) The Secretary is authorized to expend funds made available for Job Corps for the purpose of printing, binding, and disseminating data and other information related to Job Corps to public agencies, private organizations, and the general public (section 467(3)(A)).

(e) Notwithstanding the limitations of Titles II and IVC of the Act, funds made available under those titles may be used for the Job Corps program in accordance with the provisions of this Part (section 468). See also § 684.99.

(f) Recruitment, screening, and placement services shall normally be performed under contracts negotiated by either the national or regional offices with the concurrence of the national office. Contracts shall spell out the number of corpsmembers whom the screening agencies expect to depart for centers, and other support services they shall provide to applicants and corpsmembers. In exceptional circumstances, when it can be demonstrated that a grant or agreement will accomplish the same quality of performance at reasonable cost, the Job Corps Director or his or her designee may waive this requirement for contract and establish other types of agreement on an individual basis. The national office may also negotiate contracts or other agreements for these services after coordination with regional offices. Special consideration shall be given to screening agencies with demonstrated effectiveness as Job Corps screening agencies or with demonstrated effectiveness in similar activities, including to minority and womens' organizations with such demonstrated effectiveness.

(g) The Secretary may enter into interagency agreements with eligible deliverers that are Federal agencies for the establishment and operation of Civilian Conservation Centers. Such interagency agreements shall ensure compliance by such Federal agencies with the regulations under this Part.

(h) All agreements and contracts shall be made pursuant to the Federal Property and Administrative Services Act of 1949, as amended, the Federal Grant and Cooperative Agreement Act of 1977, and the procurement regulations at 41 CFR Chapter 1 and the DOL procurement regulations at 41 CFR Chapter 29.

(i) In the case where contracting authority is delegated, regional offices shall submit copies of all negotiated contracts and agreements to the national office.

(j) Job Corps may make advance payments by Letter of Credit or Treasury check, but only to nonprofit contractors, and only in accordance with the regulations found at 31 CFR 205.

(k) Job Corps shall pay contractors by U.S. Treasury check in accordance with the procedures of Chapters 1 and 2 of 41 CFR 1–30. Specific schedules and procedures shall be spelled out in each contract.

(l) Job Corps payments to Federal agencies that operate CCC's shall be made by an advance transfer of obligational authority from DOL to the respective operating agency on a quarterly basis.

(m) When a regional office wishes to establish a day care facility for the children of corpsmembers, it shall submit a proposal to the Job Corps Director for approval. All such proposals shall describe efforts made to establish cooperative relationships with other agencies that are engaged in similar activities, and any joint funding arrangements that can be made.

§ 684.23 Center performance measurement.

The Job Corps Director shall establish a national performance measurement system for centers, which shall include annual performance goals. With these goals in mind, and taking into account differences among centers that may affect them, regional offices shall negotiate with each center to establish mutually agreeable statistical performance goals, which the center shall then strive to achieve. Such goals shall be included in the contract or spelled out in a memorandum of agreement between the center and the regional office. Each Center Director shall maintain data on the center's performance in relation to its goals. Periodic meetings between each center and its regional office shall be held to evaluate such data and to determine ways to improve performance or to readjust goals as necessary.

§ 684.24 Site selection and facilities management.

(a) The Job Corps Director shall approve the location and size of all Job Corps centers.

(b) For contract centers, when the Job Corps Director determines that a center is to be established, relocated, or expanded:

(1) The regional offices shall locate sites or facilities. Subsequent to such action, the regional office shall request the national office to conduct a site survey, on the basis of which the national office shall prepare a written report, including:

(i) A preliminary engineering and occupational safety and health evaluation of the condition and capacity of existing buildings, pavements, utility systems, installed equipment, and all other real property components; and

(ii) A preliminary cost estimate for acquisition of facilities, necessary rehabilitation, modification, and new construction required;

(2) When the regional and national offices agree, on the basis of the site survey, that the site is a favorable one, the regional office will provide the national office with its selected vocational training programs, taking into consideration their compatibility with available facilities insofar as possible, and the national office will conduct a preliminary utilization study. The preliminary utilization study will provide a detailed engineering and occupational safety and health report of the facility including outline drawings of buildings; proposed capacities and utilization; budget cost estimates for rehabilitation, modification, and new construction required; and an estimated

time schedule reflecting the total cycle for design and construction. Copies will be distributed to appropriate parties of the regional and national offices for review. The regional office project manager, national office desk officer, and contract project engineer will then convene at the site with copies of the preliminary utilization study; then they will walk through the facilities to verify the utilization plan, including the vocational training programs and the rehabilitation, modification, and construction work to be accomplished. Based on the results of this site visit, a final utilization study will be prepared and approved by the Job Corps Director. The approved utilization plan then becomes the basis for scope of work, budget, design, rehabilitation, and construction of facilities for the center;

(3) On the basis of a favorable regional and national office judgment, based on the site survey and utilization studies, the national office shall initiate action to obtain an appraisal, if necessary; and engineering report indicating metes and bounds, right of ways, set backs, and all underground utility information, if available; and to acquire the property. The lease of all real property shall be negotiated between the owner and the national office;

(4) The national office shall purchase all property when this is necessary, after other attempts to obtain the needed property have been exhausted or have been proved not cost beneficial;

(5) The national office shall be responsible for all design and construction actions for new center establishments in consultation with regional offices. Such actions shall include the:

(i) Negotiation, award, execution, and administration of design contracts;

(ii) Review and approval of design packages;

(iii) Supervision of bid openings;

(iv) Award and administration of construction contracts; and

(v) Surveillance and acceptance of work done pursuant to such contracts;

(6) The regional office may undertake all actions pursuant to paragraph (b)(5) of this section for relocation or expansion of ongoing centers after consultation with the national office. The national office will prepare the written report required pursuant to paragraph (b)(1) of this section and will acquire any real property involved when an existing center is expanded or relocated. When the regional office decides to undertake the actions under paragraph (b)(5) of this section, the national office will review and approve architect/engineer selection and will review and approve the project scope, cost estimates, and plans and specifications as provided under § 684.25(b)(2).

(7) The national office will be responsible for coordinating all actions required under the Federal Property Management Regulations, which include the annual real property reports and facilities surveys as provided by section 684.27. No changes to real property, either new construction, modifications, demolitions, or expansion will be undertaken without prior approval of the national office so such changes may be properly recorded and approved. The national office will develop and maintain a real property management system.

(c) For federally operated centers, either the Job Corps Director or a Federal agency may propose a site on public lands, and if discussions between them establish the advisability of such, the Director may require that the agency submit a site survey and utilization plan. If the Job Corps decides to establish a center, facilities engineering and real estate management will be carried out by the national office or agency pursuant to an interagency agreement and the regulations of this Part.

(d) At such time as a CCC runs out of acceptable Vocational Skills Training (VST) projects within 1 hour's commuting distance of the center, and/or a negative environmental impact occurs because of the center's location, the national office shall consider its relocation.

(e) The Secretary shall submit a notice of any proposed center to the Governor. The Governor shall have 30 days from the date of the notice to disapprove the center. Such disapprovals shall be in writing and shall be sent to the Secretary.

§ 684.24a Historical preservation.

The Job Corps Director shall review the "National Register of Historic Places," issued by the National Park Service, to identify sites, buildings, structures, and objects of archeological, architectural, or historic significance which could be destroyed or adversely affected by any proposed project. Procedures for review are included in the "National Register of Historic Places" at 36 CFR Part 800. The Register is published in the Federal Register each February with supplements on the first Tuesday of each month.

§ 684.25 Capital improvements.

(a) *For federally operated centers.* Centers operating under interagency agreement shall submit requests for capital outlay funds to the national office for review and approval pursuant to § 684.109.

(b) *For contract centers.* (1) Requests for needed capital improvements for each fiscal year shall be submitted to the regional offices which shall send them to the national office to determine priorities within the overall Job Corps approved budget. Such requests for each center shall include:

(i) A description of the project, including capacities, square footage, and sketch plan of utilization;

(ii) Whether the design is to be accomplished by an architecture and engineering firm or by qualified center personnel. If the latter, qualifications of key personnel shall be submitted and approval obtained prior to start of design;

(iii) Whether the construction is to be accomplished by subcontract, center staff, corpsmembers, or otherwise. If staff and corpsmember construction is contemplated, approval, including approval of who will supervise the construction, must be obtained in advance;

(iv) Anticipated costs and the basis for the estimate; and

(v) Projects accomplished during the previous year, the amount spent on such projects, and the balance of capital improvement funds remaining.

(2) For capital improvements and projects on contract centers that are estimated to cost more than $100,000, or rehabilitation projects estimated to cost more than $50,000, or projects that result in changes to any building structural system, or major mechanical, electrical, or plumbing system, the following procedures shall be followed:

(i) The design of such improvements shall be accomplished by an architect/engineer consultant.

(ii) The selection of the architect/engineer consultant shall be in accordance with the Code of Federal Regulations, Title 41, Part I. Further guidance may be found in "A Guide to Architect/Engineer Selection," available from the national office. The national office shall approve all selections of architects and engineers.

(iii) Plans and specifications shall be submitted as they are being developed by the architect/engineer to the national office for technical review as follows:

(A) Where new construction is involved, prior to start of construction drawings, a preliminary sketch of new building(s) and site improvements shall be submitted for approval and shall include an outline of proposed materials, plans, cross sections and elevations, and an estimate of cost in sufficient detail to allow review;

(B) Architectural, mechanical, electrical, structural, and civil plans as required, drawings and outline specifications (Design Development), when they are 30 percent complete, at the scale to be used on working drawings, and including load capacities of mechanical and electrical systems, and a cost estimate developed to the point that a refined scope of work can be determined;

(C) Working drawings and specifications (Preliminary Design) when they are 60 percent complete, including sufficient material to permit a thorough overall review, and a cost estimate broken out by disciplines such as architectural, mechanical, electrical, and structural; and

(D) Complete working drawings and specifications (Final Contract Documents) adequate for bid, contract, and construction purposes; a refined cost estimate; and a realistic completion date; and

(3) When a regional office plans to contract for new construction in an amount greater than $100,000, or for rehabilitation contracts in an amount greater than $50,000, the region shall open bids, compile all bids received from prospective contractors in an abstract, and together with a letter giving the results of an investigation of the contractor that the region recommends for the award, shall submit such bids to the national office for approval.

(c) All capital improvement projects and new construction on contract centers that modify or add new structural components or make changes to major mechanical, electrical, and plumbing systems, which are to be done by corpsmembers, must be done in accordance with a set of professionally prepared plans and specifications, and under professional supervision. Plans and specifications for such work must be submitted for a technical review in accordance with paragraph (b)(2) of this section.

§ 684.26 Protection and maintenance of contract center facilities owned or leased by Job Corps.

(a) When an existing center or component thereof is being replaced, and a contractor is already operating the center, the protection and maintenance of the new facilities shall be the responsibility of the regional office from the effective date of the lease or purchase of the new facility by Job Corps.

(b) When a portion of an existing center is to be closed and a contractor is operating the center, the regional office shall be responsible for the protection and maintenance of the site from the date of closing.

(c) When a new site is selected and an operating contractor is to be selected, or is already selected but is not operating the site, the protection and maintenance of the new facility shall be the responsibility of the national office from the effective date of the lease or purchase by Job Corps until the site is turned over to the operating contractor.

(d) The national office shall protect and maintain centers that are completely closed and all center sites where there is no contractor.

§ 684.27 Facilities surveys.

The national office shall work with the regional office in conducting a facilities survey of each center at least every 2 years, and will submit reports of their findings to the regional office and the center.

Subpart D—Job Corps Participant Enrollment, Transfers, Terminations, and Placement

§ 684.30 Recruitment and screening of corpsmembers.

(a) Screening agencies shall be selected by regional offices and the national office as outlined in section 684.22(f), and shall operate under contracts or agreements negotiated with them.

(b) Screening agencies shall develop outreach and referral sources, actively seek out potential applicants, conduct personal interviews with all applicants, and determine who are interested and likely Job Corps candidates. They shall also judge whether the potential applicant's educational, vocational, health, and other placement-related needs can best be met through a Job Corps residential or nonresidential program or through an alternative program in the youth's home community.

(c) Screening agencies shall complete all Job Corps application forms, pursuant to a Job Corps Forms Preparation Handbook, which shall be issued by the Job Corps Director.

(d) To establish eligibility pursuant to sections 452, 453, and 454 (a) and (b) of the Act, during the screening process agencies shall determine whether each applicant:

(1) Is at least 16 and not yet 22 years of age at the time of proposed enrollment;

(2) Is a citizen of the United States, a United States National, a permanent resident alien, or other alien who has been permitted to accept permanent employment in the United States by the Immigration and Naturalization Service (sections 121(p) and 132(e));

(3) Requires additional education, vocational training, and related support services to participate successfully in regular school work, qualify for other training programs, satisfy Armed Forces entrance requirements, or qualify for a job where prior skill or training is a prerequisite;

(4) Is economically disadvantaged;

(5) Has sufficient intelligence to benefit from the program as evidenced by information from schools or another appropriate community resource;

(6) Demonstrates an interest in obtaining maximum benefit from the program, as evidenced by a voluntary desire to enroll and the youth's signature on the application form. The screener shall be sure that the applicant has a clear understanding of Job Corps and of what will be expected of the applicant at the center and that there is a reasonable expectation that he or she will succeed in Job Corps;

(7) Has a signed consent for enrollment from a responsible parent or guardian if the applicant is under the age of majority;

(8) Has established suitable arrangements for the care of any dependent children for the proposed period of enrollment;

(9) Is not on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, unless the court or other agency having jurisdiction states in writing on the appropriate form that:

(i) The court has acted, with the result of such action;

(ii) The youth has responded positively to supervision;

(iii) If applicable, the applicant may leave the State of jurisdiction while enrolled in Job Corps;

(iv) No personal, face-to-face supervision of the applicant by a correctional official will be required during enrollment, whether or not the case is transferred under an interstate agreement, unless prior approval has been given by the regional office and the Center Director; and

(v) Any reports needed from the center will be requested by the court or other agency each time they are wanted; and

(10) To qualify for residential training, is currently living in an environment so disruptive that the prospects for successful participation in a nonresidential program are substantially impaired. Disruptive conditions which may establish this need include, but are not limited to:

(i) A disruptive home life;

(ii) An unsafe, unhealthy, or overcrowded dwelling place; and

(iii) A neighborhood or community characterized by high crime rates, high unemployment rates, high school dropout rates, and similar handicaps.

(e) The screening agency shall also collect sufficient information on required forms concerning any behavioral, medical, or mental health problem that the applicant may have or may have had, to enable the regional office to determine whether the applicant is:

(1) Physically and emotionally able to participate in normal Jobs Corps duties without extensive medical treatment; and

(2) Free of any behavioral problem so serious that it would potentially prevent the applicant from participating successfully in group situations, prevent other enrollees from receiving the benefit of the program, or impede satisfactory relationships between the center to which the individual is assigned and surrounding communities. No individual will, however, be rejected for enrollment solely on the basis of that individual's contact with the criminal justice system (sections 454(a) and (b)).

§ 684.31 Selection, assignment, and enrollment of corpsmembers.

(a) Regional offices shall be responsible for selection of eligible applicants and for their assignment to centers.

(b) For those applicants who, without question, meet all of the eligibility requirements listed in section 684.30(d), regional offices shall either:

(1) Require screening agencies to submit all completed applications to the regional office for final determination of eligibility; or

(2) Enter into agreements with regionally approved deliverers of service to hold such applications, and notify the region that the youths are ready for assignment. Such agreements shall include the procedures established by the regional office to assure that the youths are promptly notified of their eligibility, are enrolled without unnecessary delay, are assigned as near to their homes as possible, and that applications are received at the center of assignment at least 5 working days before each youth's scheduled departure. The regional office shall make necessary transportation arrangements for each selected applicant.

(c) In all cases when there is a question as to whether an applicant meets one or more of the eligibility criteria for enrollment but the screening agency believes that the youth should be enrolled because of exceptional circumstances, the screening agency shall send the completed application to the regional office, along with a written justification supporting this belief. The regional office shall make the final decision as to eligibility. In such cases, the regional office may ask the screener for any additional information it deems necessary to make this determination. No exceptions to the provisions of § 684.30(d) (1) and (2) shall be granted.

(d) When the application reveals a health problem that raises a question as to the applicant's capability to participate in the program, the regional office shall authorize screeners to obtain either further information from former providers of medical, mental health, or dental services, or a full or partial health examination and submit it to the regional office for review prior to the final determination of eligibility. No applicant shall be admitted or readmitted to Job Corps after being hospitalized for a mental condition unless a report is submitted to the regional office by a mental health professional giving the history and current status of the condition. Payment for health services that cannot be obtained without cost by screening agencies shall be arranged for and have prior approval of the regional office (section 452(4)).

(e) In all cases when applications are sent to the regional office, the regional office shall notify the screening agency as to which applicants have been selected and which rejected, and the screening office shall notify the applicants. For those selected, the regional office shall make center assignments to centers nearest the youth's home when this is feasible (section 455(c)), based upon the number of center openings, the training opportunities available at the center, and the entry requirements of the center's programs. The regional offices shall send the complete application folder to the center, notify screeners of the center of assignment, and issue a travel package to them for each selected applicant.

(f) When, during the course of the screening process, it becomes clear that an applicant is ineligible, or when the regional office rejects an applicant, the screening agency shall inform the applicant of the reason and make every effort to provide needed services or to refer the youth to other community resources.

(g) Screeners shall notify selected applicants of their center of assignment, conduct an assignment interview, arrange for the departure of the prospective corpsmember according to the itinerary set out in the travel package, and prepare the enrollment and departure forms.

(h) The regional office shall make every effort to see that the application folders of approved applicants and Travel Itineraries listing the name and scheduled time of arrival for each corpsmember are received at the center of assignment at least 5 working days prior to the scheduled arrival date.

(i) The Center Director, no later than 5 working days following the scheduled arrival date for each corpsmember, shall submit an annotated copy of the Travel Authorization and other related travel documents to the regional office, indicating which corpsmembers arrived and which did not arrive; and the regional office shall notify the screener. The center shall retain the application folders of those who do not arrive for 15 days, after which time such applications shall be returned to the regional office marked "no-show."

(j) Instructions for completion and distribution of all forms mentioned in this section shall be found in the Job Corps Forms Preparation Handbook.

§ 684.32 Enrollment by readmission.

A youth may apply for readmission provided the youth has participated in Job Corps for less than 24 months and can be expected to complete a program within the remaining portion of the youth's 24-month enrollment period. No youth shall be readmitted directly to an extension program. Regulations for screening and selection of applicants for readmission are the same as for initial enrollment, except that only in exceptional cases shall a youth be readmitted prior to 6 months after the youth's termination, more than one time, after receipt of a disciplinary discharge, or when readmission is not recommended by the former center of assignment.

§ 684.33 Transfers.

(a) The Center Director may arrange through the regional office for the Transfer of a corpsmember from one center of assignment to another center or to an extension program except as outlined in paragraph (g) of this section, when:

(1) A corpsmember is interested in and has an aptitude for a program of training not available at the center of assignment;

(2) A change in environment or associations for the corpsmember will enhance the chances for program completion;

(3) A corpsmember has the potential ability to continue in Job Corps successfully, but will need health

services only available at another center; or

(4) A corpsmember's appeal of a disciplinary discharge is sustained.

(b) When the Center Director has decided that the transfer of a corpsmember is advisable, he or she shall request approval in writing from the regional office having jurisdiction over the center.

(c) The regional office shall approve or disapprove the request, and, if approved, shall locate an opening suitable to the corpsmember's training and other needs, in the same region if possible, or in another region, through coordination with that regional office.

(d) After obtaining approval for the transfer from the receiving center, the other center or the regional office having jurisdiction over the other center shall issue travel orders and notify both centers of the corpsmember's date of departure and arrival time.

(e) The losing center shall notify all concerned parties of an approved impending transfer, and shall see that all of the corpsmember's records are brought up to date, including a current evaulation of his or her health condition, and forwarded to the receiving center. It shall also submit necessary forms to the finance center to effect the change in address for allowance purposes.

(f) The receiving center shall assume responsibility for a transferring corpsmember on the date and at the time of departure from the losing center, and shall notify the regional office in which the losing center is located if the expected corpsmember does not arrive on schedule. The receiving center shall also submit the notification of termination to the finance center.

(g) Since extension programs generally are not able to provide comprehensive health services, unless the extension program has agreed in advance, no one may be transferred to an extension program who:

(1) Has a health condition correctable within center limitations that the transferring center has not fully addressed and corrected; e.g., poor vision requiring glasses;

(2) Is pregnant;

(3) Needs continuing mental health care;

(4) Is still classified as Dental Priority I or II as described in § 684.65, or who has partially completed dental work that will be significantly interrupted by transfer;

(5) Has a chronic medical problem that requires continuing medical supervision;

(6) Is receiving active medical treatment for an acute condition or who requires medical followup for a known condition; or

(7) Is expected to require extensive speciality or hospital services within 6 months.

§ 684.34 Extensions of enrollment.

(a) The Center Director shall see that the total length of enrollment of a corpsmember does not exceed 2 years (section 455(a)) except that the regional office may approve an extension when a course of instruction to qualify a corpsmember for placement, including one provided through an extension program, can be completed in 4 months or less. In extraordinary circumstances, the regional office may request approval of a longer extension from the national office:

(1) For such time as a corpsmember is under pending criminal charges; or

(2) For such time as it takes to stabilize a health condition pending medical termination and referral.

(b) The Center Director shall note the date and reason for approval of such extensions in writing and make the written approval a part of the corpsmember's personnel record.

§ 684.35 Federal status of corpsmembers.

Corpsmembers shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of employment, leave, unemployment compensation, and Federal employee benefits, except as provided by 5 U.S.C. 8143(a), and by §§ 684.84, 684.85, 684.86, and 684.87 of this Part (section 465(a)).

§ 684.36 Terminations.

(a) Center Directors may terminate corpsmembers according to one of the following categories and conditions:

(1) A program completion termination may only be given when a corpsmember has remained in pay status in the Job Corps for at least 90 days and has either:

(i) Satisfactorily completed an authorized vocational training program;

(ii) Been accepted for additional education or training after termination from Job Corps by an organization such as a college, an apprenticeship program, or a technical school; or

(iii) Been accepted for entry into the Armed Forces;

(2) A maximum benefits completion termination may only be given when a corpsmember has remained in the Job Corps for at least 90 days in pay status and when the Center Director approves a recommendation for such termination made through the maximum benefits system. Such recommendation shall only be made by the Progress/Performance Evaluation Panel (P/PEP) when it believes that the corpsmember has achieved as much total benefit from the total Job Corps program as his or her abilities will allow;

(3) An administrative termination, documentation of the reasons for which shall be sent to the regional office, may only be given when it has been established that a corpsmember has:

(i) Fraudulently established his or her eligibility to enroll or been enrolled as the result of a substantive screening error. Such terminations shall have prior regional office approval;

(ii) No further interest in the program, as evidenced by his or her failure to participate in or attend classes and other required activities, but does not wish to resign. Such terminations shall be made only after every effort has been made to determine and correct the reason(s) for nonparticipation, and after the Center Director obtains regional office approval. Such approval shall always be requested when a corpsmember has accumulated a total of 30 days in AWOL status within a 180-day period;

(iii) Been on court-imposed probation or parole that is revoked;

(iv) Refused to allow a physical examination to be performed; or has

(v) A legally responsible parent or guardian who withdraws consent when the youth has not yet reached the age of majority in his or her home State. In such cases, the Center Director shall verify the requestor's legal responsibility for the corpsmember and shall urge the individual to reconsider;

(4) A medical termination may only be given after a referral has been made with the concurrence of the regional office to a resource which has agreed to provide needed care at no cost to Job Corps, and after persons responsible for the corpsmember, including the screening agency, have been notified of the health problem and referral plan, and asked to assist the corpsmember to follow through with such plan. The decision to approve or disapprove a medical termination shall be made by the regional office based on a recommendation of a center health professional. Regional offices shall see that the national health office receives concurrent copies of all written communications between the regional office and the center in reference to medical termination and transfer requests and their dispositions. A recommendation for medical termination shall be based on the results of a functional evaluation of the corpsmember that reveals that:

(i) A pre-existing or incurred disability, illness, injury or pregnancy

significantly interferes with or precludes further training in Job Corps;

(ii) The health problem is unusually long-term and/or complicated to manage;

(iii) Necessary treatment will be unusually costly; or

(iv) A pregnant corpsmember has been determined by the center physician to be unable to continue in the program;

(5) A termination by resignation shall be given at any time a corpsmember so requests, except after a review board hearing begins. Under no circumstances shall a corpsmember be compelled to resign, nor shall any resignation be deemed a disciplinary discharge. A termination shall also be called a resignation when a corpsmember who is AWOL is contacted but refuses to return to the center. In such cases documentation to this effect shall be included in the corpsmember's personnel record;

(6) A corpsmember shall be terminated as AWOL at the beginning of the 16th consecutive day of absence without leave when he or she has not contacted the center and the center's efforts to make contact have been abortive;

(7) A disciplinary termination without a center review board hearing shall be given only when a corpsmember has been either convicted of a felony or confined under sentence for 60 days or more. A disciplinary discharge may also be given pursuant to section 684.96 after a hearing by a center review board.

(b) The Center Director shall arrange for the completion and distribution of the Notice of Termination pursuant to instructions in the Job Corps Forms Preparation Handbook.

§ 684.37 Exit procedures.

Whenever feasible, beginning at least 45 days prior to a corpsmember's termination, the center shall hold a refresher training program for the corpsmember to reinforce the World of Work program. The refresher program shall include training related to planning a job hunt, choosing the best job, filling out employment application forms, job interview techniques, rights and procedures for filing EEO complaints as a result of referral and job action, and dress and conduct necessary to get and hold a job. Counseling on transition back to community life shall also be given.

§ 684.38 Certificates of attainment.

The Center Director shall issue the appropriate certificate of educational attainment, including the GED certificate, to each corpsmember who has satisfactorily completed the portion of the educational program that the certificate represents. The certificates developed by the Job Corps Director with the concurrence of the Department of Health, Education, and Welfare, shall be used (section 457(c)). Copies of the certificates and instructions for their completion shall be found in the Job Corps Forms Preparation Handbook.

§ 684.39 Transportation.

(a) Except as otherwise provided by the Job Corps Director, for travel authorized at government expense pursuant to these regulations:

(1) The national office shall place supplies of government transportation requests and meal tickets in regional offices, which shall issue them directly or provide centers with supplies of the documents for the travel of corpsmembers;

(2) Regional offices shall establish procedures with vendors and screeners to permit periodic billing for travel needs, including meals, that cannot be purchased with government transportation requests or meal tickets, such accounts to be paid with United States Treasury checks. In the event such arrangements are not practicable, or in the event of emergency en route, regional offices may utilize their petty cash funds to pay necessary expenses.

(b) Regional offices or centers, as appropriate, using the most efficient and economical means available, shall provide transportation at government expense for corpsmembers only:

(1) From home on the date of initial enrollment to the center of assignment;

(2) After termination, from the center of assignment to either home or place of employment, whichever is agreed upon by the corpsmember and the Center Director, except that such destination must have prior approval of the regional office if it is further from the center than the place of enrollment;

(3) In the event of transfer, from the losing center to the receiving center or extension program, and return to the center from the extension program when this is a built-in part of the agreement with the extension program;

(4) In emergency situations, with prior regional office approval, from the center of assignment to home or elsewhere, and return;

(5) For home leave, from the center of assignment or extension program to the place of enrollment, or to the point in the United States or its possessions to which the family with whom the corpsmember was residing prior to enrollment has moved and return. Approval of home leave to any other place shall have prior regional office approval;

(6) In the event of a corpsmember's death, shipment of remains from the center of assignment or extension program to the place of enrollment, or to another point in the United States or its possessions agreed upon by the next of kin and the Center Director;

(7) From the center of assignment or extension program and return when such journeys are in the interest of Job Corps; e.g., conferences or recruitment; and when travel is beyond the corpsmember's control; e.g., command appearances, and orientation to extension programs, but not when the trip is a result of unauthorized behavior on the youth's part; and

(8) From the center of assignment or extension program to the site of an employment interview or an interview with an apprenticeship sponsor, but only after prior regional office approval, and after the corpsmember has spent at least 90 days in the program. Such approval shall only be requested for terminating corpsmembers, and only when the Center Director has reasonable assurance that a job offer is bona fide, and that the employer will hire the corpsmember subject to the interview or that the corpsmember meets the standards of the apprenticeship sponsor and has been assured of acceptance into the program. If, after the interview, the prospective employer does not hire the corpsmember, transportation shall be provided to his or her place of residence. If the prospective employer offers the job to the corpsmember, who refuses it, the corpsmember may be required to pay any transportation cost that exceeds the cost of a trip from the center of assignment to home.

(c) The Center Director shall provide transportation at government expense from center operating funds for escorts for corpsmembers when the center physician recommends that such escort is necessary for medical reasons. The regional office may also approve a Center Director's request for transportation for escorts under other extraordinary or emergency situations such as accompanying the remains of deceased corpsmembers.

(d) Regional offices may authorize transportation at either government or corpsmember expense:

(1) When the corpsmember is AWOL and requests transportation to return to the center or to be terminated and to return home; and

(2) From home to the center of assignment for readmittees who received medical terminations.

(e) Regional offices or centers, whichever authorizes government travel, shall submit cost transmittal sheets for each movement to the national office.

(f) Screening agencies shall arrange for a staffmember or other responsible adult to accompany corpsmembers from their residence to the point of departure for a center as given in the travel itinerary. They shall also return the Transportation Requests, Meal Tickets, and carrier tickets of all applicants who do not depart for a center within 5 working days of the scheduled date of departure, except in the case when a travel delay has been approved by the regional office.

(g) The Center Director shall:

(1) Provide transportation for all arriving corpsmembers from the final carrier terminal or stop to the assigned center;

(2) Provide transportation for all authorized outgoing travelers from the center to the initial carrier departure terminal or stop;

(3) Provide all travelers with essential information, instructions, and explanations necessary for a successful trip and arrival;

(4) Provide travelers with necessary funds to cover incidental travel expenses should this be necessary. Such expenses shall be provided from the center imprest or petty cash fund, without regard to whether the regional office or the center makes the transportation arrangement;

(5) Establish and maintain systems necessary for the control of stock distribution and accountability for government transportation requests and meal tickets to safeguard against improper or unauthorized use;

(6) Insure the return of all unused government transportation requests, meal tickets, carrier tickets, Treasury checks, travel funds, and travel documents for cancellation and processing for refunds; and

(7) Provide transportation to and from home for corpsmembers who live in the same locality as the center; e.g., nonresidents, when required to do so by the center's contract.

(h) In all cases, Standard Government Travel Regulations shall apply except as otherwise provided by contractual or other agreement. Instructions for the completion and distribution of all forms necessary for carrying out this section shall be found in the Job Corps Forms Preparation Handbook.

§ 684.40 Placement and job development.

(a) The overall objective of all Job Corps activities shall be to enhance each corpsmember's employability and to effect the successful placement of each corpsmember. The placement of corpsmembers shall be the primary responsibility of placement agencies. The Center Director shall share in this responsibility, by preparing an employability development plan for each corpsmember, by training corpsmembers for placement readiness, and by directly placing corpsmembers when feasible.

(b) Placement efforts shall concentrate on jobs related to a corpsmember's vocational training, on military service when this is the corpsmember's choice, or on the location of other educational and/or training programs including college and apprenticeship training programs that are suitable to the terminated corpsmember's needs.

(c) In their placement efforts, centers and placement agencies should use the Federal Bonding Program, if appropriate, as well as public service employment programs.

(d) Placement agencies shall operate under contracts or agreements negotiated with or grants provided by the regional offices, which shall establish placement goals. Such contracts or grants shall be with SESA's whenever possible (section 461(b)). All placement agencies shall:

(1) Continue placement efforts for all terminees with priority given to program completers and those with the longest length of stay in Job Corps until such time as:

(i) A suitable job or other placement has been made and verified;

(ii) All reasonable efforts to place the corpsmember have been exhausted; or

(iii) The former corpsmember refuses placement efforts in his or her behalf;

(2) Mobilize community resources and establish linkages with other agencies such as CETA Prime Sponsors, apprenticeship programs, educational institutions, and Armed Forces recruitment agencies to help in the placement of former corpsmembers, in the provision of support necessary to placement retention, and in their adjustment to community life;

(3) Notify terminated corpsmembers when their readjustent allowances are received in the placement office and require the corpsmembers to pick them up in person whenever possible;

(4) Conduct an outreach program to locate and assist all unplaced corpsmembers who do not appear at the placement agency;

(5) Provide interviewing assistance, job development, and referral services as necessary; and

(6) Submit forms to regional offices reporting on the results of placement efforts for each corpsmember pursuant to the Job Corps Forms Preparation Handbook.

(e) Unions that train corpsmembers under contract to Job Corps shall be responsible for placing program completers in apprenticeship programs or training-related jobs whenever feasible.

(f) Center placement responsibilities shall include:

(1) The development of a plan for developing placement readiness and placement possibilities, which shall be updated as necessary and maintained by the Center Director. The plan shall include:

(i) The geographic areas to be covered by center placement efforts;

(ii) The center's method for developing and updating an employability development plan for each corpsmember, covering the total period of his or her enrollment;

(iii) Center plans for the development and implementation of linkages with such groups as local employers, employer organizations, apprenticeship programs, unions, CETA prime sponsors, Armed Forces recruiting agencies, and SESA's.

(iv) The center system for identifying and counseling corpsmembers with college potential; and

(v) For contract centers, the center's goals for the placement of corpsmembers within the organizational structure of contract center operators;

(2) Counseling corpsmembers to relocate, after obtaining approval of a responsible parent or legal guardian in the case of corpsmembers who have not reached the age of majority, when placement in training related jobs is unlikely in the individual's home community or when better opportunities are available elsewhere;

(3) Completion and distribution of all placement forms pursuant to instructions in the Job Corps Forms Preparation Handbook.

Subpart E—Center Operations

§ 684.50 Reception and orientation.

(a) The Center Director shall design and implement a reception and orientation program, with flexible scheduling aimed at keeping each new corpsmember meaningfully occupied at all times. The program shall contain at least the following:

(b) Arrangements for center staff to meet new corpsmembers at the time and place they are scheduled to arrive;

(c) Prompt notification of the regional office and of parents or guardians of the safe arrival of individual corpsmembers, or of delays, changes of schedule, or unusual or emergency situations;

(d) A description of the purpose and goal of Job Corps;

(e) Assignment to living quarters for residential trainees and the issuance of

initial supplies, advance living allowances, and necessary clothing;

(f) A complete tour of the center for both residents and nonresidents;

(g) Introduction to appropriate staffmembers, and, when feasible, the assignment of experienced corpsmembers to assist and advise newcomers;

(h) Distribution of the Corpsmember Handbook and discussion of its contents, particularly the systems of incentives and discipline, allowances and allotments, rules regarding exemption from payment of income taxes, EEO policies and the procedures for filing EEO complaints, and the rights and responsibilities of corpsmembers;

(i) A description of each of the vocational training programs offered at the center, including information about the occupational exploration program, and job placement opportunities, including entry into apprenticeship programs;

(j) An introduction to health services and the Health Education Program;

(k) Administration of the educational tests specified by the Job Corps Director to all corpsmembers to determine entry levels in education;

(l) Exposure to all recreation/avocational programs on-center and the development of an individual participation plan in these for each corpsmember; and

(m) A minimum of one individual and one small-group counseling session for all new corpsmembers during their first week on-center to alleviate anxieties, correct misconceptions, and answer questions.

§ 684.51 Corpsmember Handbook.

(a) Each center operator shall develop a Corpsmember Handbook for distribution to all corpsmembers which shall be approved by the regional office prior to publication or revision. Technical guidance materials and sample Corpsmember Handbooks shall be made available on request from regional offices. The handbook shall include at least the following:

(1) All basic center rules and regulations along with possible penalties for infraction and an identification of those responsible for enforcing such rules and imposing such penalties;

(2) The method for corpsmember participation in modifying rules and regulations;

(3) The incentives and awards system for positive behavior and achievement;

(4) A description of the disciplinary system, including the role of elected corpsmember councils, the center standards officer, and the center review board;

(5) A statement about the corpsmember's right-to-appeal, and appeal procedures;

(6) Information concerning the center's basic schedule of activities;

(7) Available health and health-related services and programs including information about Federal Employee's Compensation benefits;

(8) Leave, pass, living and clothing allowances and allotments, and the method by which these will be paid, including deductions that will be made and an explanation of income taxes;

(9) A description of the corpsmember government and leadership programs and an encouragement to participate in them;

(10) Information on activities in nearby communities; and

(11) The center facilities layout.

§ 684.52 Job Corps basic education program.

(a) Operators of Job Corps centers shall establish and maintain the Job Corps education program. Centers are encouraged to supplement and to coordinate the material and instruction for each corpsmember with his or her individual vocational program. Classes shall be small enough to allow for individual tutoring.

(b) Center operators shall provide the following educational courses:

(1) *Reading and language skills.* The basic Job Corps reading program shall be outlined in a Reading Handbook, to be issued by the Job Corps Director and shall be used by all centers.

(2) *Mathematics.* The Job Corps basic mathematics program shall be described in detail in a Mathematics Handbook, which shall be issued by the Job Corps Director and shall be used by all centers.

(3) Each Job Corps center shall offer the Job Corps Advanced General Education program to prepare eligible corpsmembers for the American Council on Education Tests of General Educational Development (GED). The use of supplementary materials, perticularly in mathematics, is encouraged. Qualifications for entry into the Advanced General Education program shall be a skills level at or above that required for completion of the basic reading and math program prescribed in the Reading and Mathematics Handbooks. Operators shall make arrangements with local testing agencies, usually State Departments of Education, for administration of GED tests, and shall pay fees charged by such agencies when the corpsmember taking the test is currently enrolled. For all examinees who make qualifying scores, the center shall assist the corpsmember to initiate application to the appropriate State for high school equivalency certification (section 457(c)).

(4) *World of Work.* Each Job Corps center shall conduct a World of Work program for all corpsmembers that develop constructive work attitudes and employability skills. This program shall follow the format of the basic program developed by the Director of Job Corps. The centers may augment this with other materials. The program shall include units on job attitudes, sources of job information, job application forms, interviewing, consumer education, how to get jobs, success on the job, job safety, unions, income tax, EEO complaint procedures, and a final unit on exit readiness. Vocational instructors shall serve as consultants on structuring the World of Work course in coordination with the education, health, and residential living staff; and

(5) *Health education.* A comprehensive health education program shall be provided to all corpsmembers as soon as possible after enrollment. Coordination among the center staff shall be arranged by the Center Director when responsibility is divided for different types of health education training. Sufficient time shall be scheduled to see that corpsmembers complete at least the following subjects, for which curriculum guidance shall be provided by the national office: Introduction: "The Importance of Health Maintenance"; "Nutrition"; "Dental Health"; "Obtaining Health Care"; "Love, Sex and The Family"; "Reproduction"; "Venereal Disease"; "First Aid"; "Emotional First Aid"; and "Drugs and Their Misuse."

(c) Center Directors shall provide the following courses under the special circumstances noted:

(1) *Driver education.* Trainees in vocations where the possession of a driver's license is essential for employment shall receive driver education, and shall be given first priority in course enrollment. Those who will need to drive to and from work shall have second priority. The program shall be designed to meet the State licensing requirements for classroom and/or on-the-road training of the State in which the center is located. Centers shall pay the cost of such licenses for corpsmembers who qualify for them. Driver education trainees shall be qualified for Federal licenses in all cases in which they drive such vehicles; and

(2) *Bi-linqual programs.* Selected center operators shall develop and maintain bilingual programs for persons of limited English speaking ability when such persons constitute a significant

portion of their corpsmember populations. Such centers shall be selected by regional offices, in consultation with the national office, and provision for such programs shall be included in their contracts. Regional offices shall arrange for the assignment of selected applicants needing bilinqual programs to the centers where such programs are available.

(d) Corpsmembers shall be considered as in-school youths.

§ 684.53 Vocational training.

(a) The Job Corps director, in coordination with regional offices, shall approve all vocational offerings and training curricula used at all Job Corps centers. When a new center is to be established, the regional office shall submit the plan for vocational offerings prior to acquisition or rehabilitation of vocational training facilities. When an ongoing center or regional office wishes to add or delete training programs, or to make changes in the number of training slots available, the regional office shall submit a request for such changes to the Job Corps Director for approval, prior to effecting the change.

(b) The request for changes in vocational course offerings shall include the vocational offerings to be added or deleted with occupational code; any changes in number of training spaces in other vocational offerings which the change would effect; available wage and placement data that justify the change; and cost data, including equipment, materials and supplies, space needs, renovation required, instructors needed, and any other factors that the Center Director estimates may have an impact on the center budget.

(c) All center operators shall provide individualized vocational training as necessary for all corpsmembers. Such training shall be designed to develop the specific skills necessary for placement in the vocation for which the corpsmember is being trained. Safety and occupational health shall be emphasized during training.

(d) All center operators shall use training achievement records and occupational training guides, which shall be developed or approved by the Job Corps Director. Training guides or records, developed by various unions to establish entrance requirements into apprenticeship programs, may also be used in lieu of Job Corps developed achievement records.

(e) Training shall be provided either through classroom and shop/laboratory programs, or on work projects, including Vocational Skills Training Projects, or both. Work experience shall be provided whenever feasible. The Center Director may develop off-center vocational training opportunities for those corpsmembers who need training in vocations not offered on-center either because of the small number of corpsmembers requiring such training or because of cost-benefit considerations (sections 457(a) and (b)).

(f) After approval of the Job Corps Director, initial selection of the nonunion vocational training courses for contract centers shall be negotiated and written into contract requirements. In the case of federally operated centers, initial selection of the nonunion vocational offerings shall be approved by the Director, based upon requests submitted by the Federal operator. All union training programs, and modifications thereto, shall be contracted for by the national office, after consultation with the appropriate regional office and/or operating agency.

(g) Criteria for initial selection and subsequent changes in center vocational course offerings shall include the degree of placement opportunities and the potential for upward mobility.

(h) Job Corps shall establish only vocational training programs that require at least several weeks of training to obtain a job.

§ 684.54 Occupational exploration program.

An occupational exploration program shall be provided by all centers for each corpsmember, unless the individual has already chosen a vocation and is qualified for entry into training. The program shall include at least:

(a) Classroom presentation of sufficient length to cover the nature and requirements of the training in each vocational program offered by the center and related job information; e.g., wages, hours, working conditions, safety requirements, employment and apprenticeship opportunities, union requirements, training, and entry qualification;

(b) Structured, hands-on job experience in each available training program in which the corpsmember expresses interest except that no hands-on experience shall be allowed with power tools or moving equipment. Hands-on experience should last only for the period of time necessary to achieve an understanding of what the training is like; and

(c) Placement of each corpsmember in a vocational training program no later than 30 calendar days from the date of arrival on-center, unless an exception to this rule is allowed in individual cases by the regional office.

§ 684.55 Scheduling of training.

The amount of time to be apportioned for each corpsmember's education and vocational training shall be determined by the maximum benefits system pursuant to § 684.80.

§ 684.56 Certification and/or licensing; academic credit.

(a) Whenever feasible, the operator shall make arrangements for the certification and/or licensing of corpsmembers in those occupational areas for which this is required for employment or will enhance employment. Training provided should enable the corpsmember to obtain such certification or licensing in the State where he or she will seek employment.

(b) Appropriate efforts shall be made to obtain academic credit for work and training experiences of corpsmembers. Centers are encouraged to become accredited educational institutions in the States in which they are located.

§ 684.57 Purchase of vocational supplies and equipment.

(a) When the possession of tools of the trade, vocational clothing or other equipment is a prerequisite to employment, centers may elect to develop plans for the low-cost sale of such tools and equipment to corpsmembers. The cost of such tools and equipment to corpsmembers, however, shall not be of such amount as to result in the corpsmembers' being paid less than the required minimum wage rate. Vocational instructors for both union and nonunion programs shall approve the selection of tools and equipment to be provided. Such plans shall be in writing and shall contain the following information:

(1) Vocational offering and occupational code;

(2) The number of corpsmembers normally engaged in this vocational offering at the center;

(3) The number of program completers per month; and

(4) A list of required tools and other equipment, including the price of each item, the total price of tools and equipment needed by each corpsmember for each vocational offering, and the source of supply. The center shall screen all potential sources of procurement, government and private, to get the best quality for the least cost.

(b) When such a plan involves any anticipated additional center cost, the center shall ask for regional office approval prior to the plan's implementation.

(c) In centers with such plans, corpsmembers shall be advised of the opportunity to purchase vocational tools

and equipment at reduced costs early in their vocational training programs.

§ 684.58 Work experience.

(a) Center Directors shall emphasize and implement programs of work experience for corpsmembers through center program activities or through arrangements with employers. Work experience training shall be under actual working conditions and should enhance the employability, responsibility, and confidence of corpsmembers.

(b) Center Directors shall observe the following limitations in establishing work experience programs:

(1) Corpsmembers shall only be assigned to work meeting the safety standards of § 684.124 of this Part;

(2) The services rendered or objects produced on the center may be sold at cost to corpsmembers or center employees, but shall not be sold in the community unless the Center Director is satisfied that such products or services are not readily available from private sources in the area;

(3) Any work experience arranged for employment not covered by a Federal, State, or local minimum wage law shall have prior regional office approval;

(4) When work experience with pay is arranged by the Center Director, the corpsmember, for purposes of the applicable wage provisions of the Davis-Bacon Act, the Fair Labor Standards Act, and other applicable minimum wage laws, shall be considered a joint employee of the Job Corps and the work experience employer.

(i) The wages paid by Job Corps (including the reasonable cost to Job Corps of room, board and other facilities, as well as clothing and living allowances) shall be no less than the Federal minimum wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act (FLSA) for up to 25 hours a week. (During 1979, the FLSA minimum wage is $2.90 per hour, or $72.50 for a 25 hour work week; during 1980 it is $3.10 per hour, or $77.50 for 25 hours; and during 1981 and thereafter it is $3.35, or $83.75 for 25 hours.) The work experience employer shall pay the corpsmember, in cash, any wages above the FLSA minimum whenever such additional amounts are required by the Davis-Bacon Act, the State or local minimum wage law, or other applicable minimum wage law. For any time the corpsmember works in excess of 25 hours per week, the work experience employer shall pay the corpsmember, in cash, the entire wage at the highest wage rate required by any applicable law.

(ii) In addition to the cash wages required to be paid by work experience employers by paragraph (b)(4)(i) of this section, work experience employers, after the first six weeks of work by a corpsmember, shall also pay additional cash wages to the corpsmember at an hourly rate of 25 percent of the wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act.

§ 684.59 Leisure time employment.

A Center Director may authorize gainful leisure time employment of corpsmembers as long as such employment does not interfere with required scheduled activities.

§ 684.60 Health care and services.

(a) The center operator shall provide a comprehensive health program for all corpsmembers from admission until termination from the Job Corps. The program shall include at least:

(1) Routine medical, dental, and mental health care, including a daily sick call or open appointment system, and any necessary specialist referrals and/or consultations, and written standing orders for on-center dispensary and infirmary care and written arrangements for off-center inpatient care;

(2) Ready access to emergency medical, dental, and mental health care on a 24-hour basis, including first aid on-center, which shall be provided by a staff member with a valid Red Cross first aid certificate or its equivalent;

(3) Qualified personnel, adequate facilities, necessary equipment, supplies and transportation for routine and emergency medical, dental, and mental health services. The Center Director shall see that staff members who are in frequent contact with corpsmembers receive training in cardiopulmonary resuscitation (CPR) and first aid.

(4) Environmental health services pursuant to section 684.125.

(b) The Center Director shall obtain prior written consent from a parent or legal guardian of corpsmembers who are under the age of majority each time the corpsmember requires other than routine medical or surgical treatment. The consent form obtained by the screening agency prior to enrollment shall serve as authorization for routine health care. In emergency situations, the Center Director may make an exception to the requirement for consent when a parent or guardian of a corpsmember under the age of majority cannot be reached. This shall be so documented in the corpsmember's health record.

(c) Except in emergency situations, the Center Director shall obtain approval from the regional office prior to authorizing any hospitalization that health professionals estimate will exceed 10 days in duration or $1,500 in cost.

(d) Job Corps shall not normally pay for any health care services incurred by a corpsmember while on leave or pass unless these have been previously authorized by the Center Director or physician. In the event of an emergency, when authorization cannot be obtained prior to provision of necessary services, the Center Director may later elect to pay such costs.

(e) All forms required to complete and record the health care required are described in the Job Corps Forms Preparation Handbook.

§ 684.61 Physical standards and medical evaluation.

(a) Center physicians shall provide current signed and dated standing orders, which shall be kept in the center's health unit, indicating the care and procedures that shall be carried out by the center health personnel. These orders shall include at least guidance concerning emergency procedures, procedures that can be performed by nonphysician personnel, care of commonly encountered health conditions, and administrative procedures.

(b) The center physician shall also provide a set of written standing orders for the guidance of nonhealth personnel when dealing with health emergencies and minor illnesses when center health staff is not on duty.

(c) Within the first 24 hours of arrival on-center, the Center Director shall see that each corpsmember has a cursory medical inspection to determine if he or she has any hazardous health condition.

(d) A report of Medical History form shall completed for each corpsmember and each corpsmember shall receive a definitive medical examination by a physician or a qualified paraprofessional designated by a physician within 2 weeks of arrival on-center. The results of this examination shall be recorded on the Report of Medical Examination form.

(e) The medical examination shall include at least the following laboratory tests: for all corpsmembers, a tuberculosis skin test, followed by a chest X-ray for those whose reaction is positive, serology, a dip-stick urinalysis and gonorrhea testing; for all corpswomen, a pregnancy test, pap smear and hemoglobin or hematocrit; for all corpsmembers who wish it, sickle cell testing.

(f) The center physician shall arrange for any necessary inpatient care, or

recommend an alternative disposition if such inpatient care is not practicable.

(g) The Center Director shall arrange for a physical evaluation for each corpsmember who is to be transferred or who is being considered for medical termination.

§ 684.62 Ocular care.

The Center Director shall arrange for the referral to an optometrist or ophthalmologist of corpsmembers with simple uncorrected refractive errors evidenced by a visual acuity of 20/40 or worse on the Snellen chart or with scores of J6 or worse on the Jaeger chart of 50 percent or worse in visual efficiency. Color vision shall be tested on all corpsmembers. The center shall furnish glasses as needed. Contact lenses shall be provided only in cases of refractive error when the improvement in vision from contact lenses would be substantially greater than from glasses.

§ 684.63 Immunization.

(a) Centers shall provide for a basic immunization series and for any necessary prophylactic immunization and reimmunization of corpsmembers, beginning no later than the entrance medical examination, and may also immunize center staff and their families who share the same environmental exposure. Corpsmembers may be exempted from any immunization by the center physician for health or religious reasons. Corpsmembers who arrive with documented current immunization shall also be exempted. A record for each person immunized shall be kept on the Job Corps Immunization Record form.

(b) The Job Corps Director shall periodically issue standards for immunization practices in Job Corps. These standards shall be based upon recommendations of the Center for Disease Control of the Department of Health, Education, and Welfare, and shall be adhered to by centers.

§ 684.64 Communicable disease control.

(a) Corpsmembers shall not handle food or engage in food preparation activities until after they satisfactorily complete the entrance medical examination.

(b) The Center Director shall arrange for the immediate examination by a physician or a qualified paraprofessional designated by a physician of all appropriate center personnel and corpsmembers when any case of hepatitis, meningitis, tuberculosis, or any significant number of cases of gastroenteritis or other serious communicalbe disease occurs.

(c) The Center Director shall report to State and local health departments all cases of disease that they require to be reported to them in accordance with State and local laws. Center physicians shall deal with all cases of communicable disease in accordance with the current recommendations of the Center for Disease Control of the Department of Health, Education, and Welfare.

(d) Rabies prophylaxis and tetanus wound management shall be given in accordance with the standards of the Center for Disease Control.

§ 684.65 Dental care.

(a) The Center Director shall arrange for an oral inspection of each corpsmember at the same time as the cursory physical examination.

(b) The Center Director shall arrange for each corpsmember to have a Class II dental examination as described by the American Dental Association between the 45th and 75th day after enrollment. Routine dental care beyond the examination will be made available and is voluntary on the part of corpsmembers, except that the center physician or dentist shall require necessary treatment upon the identification of a communicable or acute condition that threatens the health of the corpsmember or others.

(c) Dental X-rays shall be authorized only by a dentist, and pregnant corpswomen shall be X-rayed only with individual authorization by the center dentist. On-center X-ray equipment shall comply with applicable Federal and State laws regarding leaded walls, radiation leakage, and protection of personnel.

(d) The center shall provide for restorative treatment for corpsmembers with the priority of such treatment based on the condition's urgency. The assignment of such priorities shall be made at the time of each corpsmember's initial dental examination and reassignment made as restorative treatment alleviates the condition.

§ 684.66 Pregnancy.

(a) With the approval of the Center physician Center Directors shall keep pregnant women in Job Corps if they desire to stay and if there is a good probability based on a functional evaluation that they can complete a defined segment of the program, which shall be considered as three months of enrollment for corpsmembers who are discovered to be pregnant at the time of arrival on-center.

(b) Center Directors shall arrange for the provision of comprehensive support services to pregnant corpswomen including:

(1) All necessary prenatal and perinatal care including hospitalization and emergency delivery, until medical termination with an appropriate referral; and

(2) Comprehensive pregnancy counseling, including the possibility for Job Corps retention, termination, and readmission.

(c) Only after obtaining signed consent from a corpswoman shall any individual notify the person legally responsible for her or notify anyone else that she is pregnant.

(d) Center Directors shall see that family planning services are available to all corpsmembers who wish them, but no corpsmember shall be required to participate in a family planning program.

§ 684.67. Mental health.

(a) The Center Director shall provide a mental health program that includes the services of a professional consultant for the center. Such consultant's responsibility shall be to give consultation to the Center Director on the overall center mental health program and to provide training and consultation to those staff members who are in direct contact with corpsmembers. However, with the concurrence of the Center Director, the consultant shall also provide or arrange for direct services to corpsmembers such as mental health evaluations and psychological testing when necessary.

(b) The Center Director, in consultation with the regional office, shall determine how much on-center time shall be spent by the mental health consultant in ongoing staff consultation and training, and how much in individual consultations with corpsmembers.

(c) In the event of a mental health emergency, when a corpsmember's behavior endangers the corpsmember or others, the Center Director may request the assistance of local medical and/or law enforcement personnel. If restraint is required, the Center Director shall allow only that amount of physical restraint necessary to prevent the corpsmember from harming himself or herself or others or from damaging property. No corpsmember shall be physically restrained for more than 1 hour without, at a minimum, verbal consultation with and the approval of a physician.

(d) When a corpsmember is taken into custody by the police and his or her behavior indicates possible emotional disturbance, the Center Director shall make every effort to arrange for prompt mental health evaluation and treatment.

(e) The center shall not provide long-term psychiatric treatment to a corpsmember when this treatment would require significant expenditure of program funds or staff time. Corpsmembers who need this kind of care shall be referred to adequate psychiatric facilities at no cost to Job Corps and shall be medically terminated.

§ 684.68 Drug use and abuse.

Each Center Director shall see that corpsmembers who have problems related to drugs, including alcohol, are provided counseling or other therapeutic assistance. Each Center Director shall also arrange to provide corpsmembers and staff members with current and accurate information on the effects of such drug misuse.

§ 684.69 Sex-related issues.

Each Center Director shall see that center rules concerning sexual behavior pertain equally to all corpsmembers. The center shall provide counseling services for corpsmembers whose sexual behavior interferes with their ability or the ability of others to participate in the Job Corps program. The center shall also provide medical and/or mental health services, as deemed necessary. When resolution of such behavior is not possible within the Job Corps, corpsmembers exhibiting such behavior shall be terminated. In cases where sexual behavior is a symptom of an overriding health problem, or when the corpsmember recognizes the need or possible benefit from appropriate health followup in the home community, a medical termination may be given pursuant to § 684.36(a)(4). In cases where disregarding center rules is the sole issue, disciplinary termination is appropriate, pursuant to § 684.96(b)(7).

§ 684.70 Death.

If a corpsmember dies, the center shall:

(a) Promptly notify the next of kin by telephone, when feasible, and by telegram, with confirmation requested;

(b) Delay public announcement or issuance of a news release concerning the death until next of kin are notified;

(c) Notify the regional office and the Job Corps Director by telephone or wire within 6 hours of the center's knowledge of the death, giving pertinent personal vital statistics and related information about the death;

(d) Notify the appropriate District Office of Workers' Compensation Programs of the death and the circumstances surrounding it, including whether the death occurred during performance of duty, and file appropriate forms with that office (section 465(a)(2)) of the Act;

(e) Inform the next of kin of any possible benefits that may be available from Federal Employees' Compensation if death occurred during the performance of duty. If it did not so occur, notify them that the government shall pay only for expenses involved in the preparation and transportation of the remains to a mortuary in the area selected by the next of kin, within the United States and its possessions;

(f) Consult the decedent's family as to final disposition of the remains before any final action is taken in this regard; and

(g) If the next of kin refuses to accept the remains, arrange for burial at a site close to the center and at a cost not to exceed the amount authorized in section 8134(a) of the Federal Employees' Compensation Act (FECA).

§ 684.71 Reporting critical medical situations.

The Center Director shall immediately report critical medical situations to the regional office with an information copy to the Job Corps Director, as well as to the local health officer in the case of communicable disease. Such critical situations shall include at least the following:

(a) Any significant infectious disease which may be transmitted from person-to-person such as chancroid, diphtheria, hepatitis, meningitis, mumps, poliomyelitis, primary or secondary syphilis, tuberculosis, and typhoid or paratyphoid fever;

(b) Any significant infectious disease or disease due to an infectious agent which is generally transmitted from other than human sources such as botulism, rabies, Rocky Mountain Spotted Fever, or tetanus;

(c) Any outbreak or epidemic of an infectious disease such as conjunctivitis or kerato-conjunctivitis, gastroenteritis including food poisoning, scarlet fever, rubella or rubeola, and streptococcal sore throat;

(d) Severe reactions to immunization or administration of medication; and

(e) Serious injury, death, and conditions likely to result in death.

§ 684.72 Residential support services.

(a) All Center Directors shall provide for residential support services structured as an integral part of the overall training program. This service shall include a secure, attractive physical and social environment, 7 days a week, 24 hours a day, designed to enhance learning and personal development. The goal of such services shall be to produce an atmosphere that promotes corpsmember productivity without extravagance and luxury. All corpsmembers, including nonresidents while they are on-center, shall be provided with the full program of services.

(b) Centers shall operate residential facilities that are well maintained and comply with applicable Federal, State, and local safety, health, and housing codes for multipurpose group residences. The number of corpsmembers assigned to each living area should be relatively small to encourage the growth of self-discipline and supportive group relationships. In residential facilities:

(1) Bathrooms and showers shall be brightly lit and clean;

(2) Dormitory facilities shall include multipurpose room(s) sufficient for the needs of corpsmembers;

(3) Furnishings shall include good beds, linens, blankets, adequate locked storage space for each corpsmember's belongings, comfortable chairs and work/study areas, television sets, good lighting, and all housekeeping tools necessary for maintenance, including washers, dryers, and ironing facilities; and

(c) Corpsmembers shall provide necessary housekeeping and participate in other center maintenance work activities such as kitchen and dining room chores (section 457(a)).

(d) Residential advisors or responsible substitutes shall adequately supervise each residence during hours when corpsmembers are present and maintain a running log of all significant events. They shall assist corpsmembers by:

(1) Fostering a dormitory atmosphere conducive to corpsmember personality and character development including an understanding of the cultural backgrounds, life styles, attitudes, outlook, and needs of their fellows;

(2) Maintaining order and a secure atmosphere in the dorms, and by operating a system that accounts for the whereabouts of corpsmembers assigned to their dormitories during and after class hours;

(3) Providing individual and/or group guidance;

(4) Conducting periodic reviews of progress in corpsmembers' personal, social, placement, behavior, and leadership development;

(5) Responding promptly and appropriately in the event of illness, injury, emotional trauma, arrest, trouble at home, or maladjustment to center life;

(6) Encouraging participation in recreation/avocational activities and in corpsmember government; and

(7) Conducting periodic dormitory meetings for purposes of mutual information sharing.

§ 684.73 Recreation/avocational program.

(a) The center operator shall develop a recreation/avocational program to be carried out, for the most part, after class hours and on weekends and holidays. Whenever possible, the Center Director shall arrange recreational, athletic, and similar events in which corpsmembers and local residents may participate together (sections 457(a) and 460(5)).

(b) Corpsmembers shall participate in the planning and implementation of such activities.

(c) All recreation/avocational center programs shall include the following components whenever feasible:

(1) Cultural events;

(2) Physical education, which may be scheduled during classroom hours;

(3) Sports;

(4) Arts and crafts;

(5) Community activities;

(6) Movies, live shows, and special events; and

(7) Reading and reference materials, including a suitably stocked library, either on- or off-center, which is accessible on weekdays, evenings, and weekends.

(d) Each Center Director shall provide supervision, instruction, and facilities, either on- or off-center, for carrying out this program, utilizing corpsmember recreational aides whenever feasible.

(e) Tools, sports equipment, athletic clothing, and related items shall be lent to corpsmembers on an as-needed basis and shall be returned to the center.

(f) The sale for individual corpsmember profit of arts and crafts objects made with center-provided materials shall be prohibited. Such objects may be sold when the profits benefit the Corpsmember Welfare Association or to carry out the arts and crafts program if such use is approved by the Association.

§ 684.74 Laundry, mail, and telephone service.

(a) Center operators shall provide adequate laundry services at no cost to corpsmembers, who shall be encouraged to launder, iron, and repair their personal clothing.

(b) The Center Director shall establish a system for prompt delivery of mail received by corpsmembers in a manner that protects the confidentiality of such mail, and shall arrange for a sufficient number of conveniently located pay telephones for corpsmember use.

§ 684.75 Counseling.

(a) Each center operator shall establish an ongoing structured counseling program that shall be focused on individual corpsmember needs. It shall be conducted by counselors, residential advisors, and other staff as appropriate, under the cognizance of the professional counseling staff.

(b) Counseling services shall cover at least four basic areas:

(1) Personal and social development;

(2) Education;

(3) Vocational training and placement; and

(4) Periodic assessments of each corpsmember's progress.

(c) The Center Director shall establish counselors' work schedules so that counselors are available to corpsmembers after the education/vocational day into the early evening hours. Counselors' offices shall be so located on-center that accessibility to the corpsmember population is facilitated.

(d) Individual and small group counseling shall be made available to all corpsmembers, both on a regularly scheduled and on an as-needed basis.

(e) Each counselor shall meet at least once per month with those residential advisors serving the same corpsmember group to assess each corpsmember's progress, identify problems, and develop a consistent and fair approach in their dealings with each corpsmember.

(f) A confidential counseling record for each corpsmember shall be maintained only in the counselor's office and shall include a brief running account of all significant counseling contacts (sections 450, 457(a) and 461(a)).

§ 684.76 Intergroup relations program.

Every Job Corps center shall conduct a structured intergroup relations program designed to reduce prejudice, prevent discriminatory behavior by staff and corpsmembers, and increase understanding among racial/ethnic groups and between men and women. The program should include at least:

(a) Information for corpsmembers about the history and contributions of various racial/ethnic groups, and the special problems of men and women;

(b) Small group discussions about specific kinds of behavior or speech which may cause tension or misunderstanding among racial/ethnic groups and between men and women; and

(c) Planned activities for leisure time relating to the customs and interests of a variety of racial/ethnic groups and of men and women.

§ 684.77 Incentives system.

(a) Each center shall establish and maintain its own incentives system for corpsmembers. Incentives shall include at least increases in living allowances, pursuant to § 684.82, special awards, and prizes, such as trophies and certificates for outstanding achievement in specific areas.

(b) The corpsmember government shall be involved in developing, operating, and evaluating the effectiveness of the system.

(c) Some incentives shall be geared to the improvement by individual corpsmembers in their own level of achievement rather than on their success in competition with other corpsmembers.

§ 684.78 Corpsmember government and leadership programs.

(a) Each center shall establish, with maximum corpsmember participation, an elected corpsmember government.

(b) Each center shall also establish and maintain a structured corpsmember leadership training program with staff advisors (section 450).

§ 684.79 Corpsmember welfare associations.

(a) The Center Director shall develop a plan for the organization and operation of a corpsmember welfare association, to be run by an elected corpsmember association council with the help of a staff advisor. This plan shall include the proposed method of establishment and operation, use of concessions, sources of revenue, and an accounting system. Prior to implementation, the Center Director shall submit the plan to the regional office for approval, except for those centers operated by Federal agencies, which shall submit the plan through their agency channels for approval. The agency shall submit a copy of its approved plan to the regional office.

(b) The plan shall conform to the following requirements:

(1) The Center Director shall establish a welfare association fund, to be managed and controlled by the association council. Revenues may come from such sources as snackbars, vending machines, disciplinary fines, sale of arts and crafts objects made by corpsmembers, and pay telephones. No federally appropriated funds shall be used to operate the corpsmember welfare association's activities;

(2) The corpsmember welfare association council; in consultation with other corpsmembers, shall make recommendations to the Center Director for expenditure of its funds. Center Directors shall allow the funds to be

used only to operate activities or make purchases or loans which clearly benefit the corpsmembers; and

(3) A center staffmember shall be responsible for maintaining the corpsmember welfare association accounting system with the assistance of councilmembers as appropriate. A method to insure the security of the fund shall be established. The system shall be subject to audit by the Department except that Federal agencies that operate centers shall audit their own corpsmember welfare association systems (section 450).

§ 684.80 Evaluation of corpsmember progress (Maximum Benefits System).

(a) The Center Director shall implement a Maximum Benefits System to evaluate the progress of each corpsmember. The system shall provide for the establishment of Progress/Performance Evaluation Panels (P/PEP). The P/PEP's shall:

(1) Consist of at least one staffmember from each of the basic education, vocational training, and counseling program areas;

(2) Receive progress evaluation reports from instructors, counselors, residential advisors, and other staff as appropriate in time for each P/PEP's meeting about an individual corpsmember;

(3) Meet initially to evaluate the progress and review the training schedule of each corpsmember within 30 to 45 days after enrollment;

(4) Meet at least every 60 days after the initial evaluation to make periodic assessments of each corpsmember's performance in all program areas;

(5) Have additional meetings with corpsmembers at the corpsmember's request or at the request of a staffmember concerning any aspect of the center program;

(6) Arrange for the corpsmember to be present at each meeting where his or her case is to be discussed;

(7) Make recommendations already known to the corpsmember involved to the Center Director about such matters as course or scheduling changes, allowance increases, incentive awards, and readiness for entry into the exit program; and

(8) Inform corpsmembers about actions they should take to improve performance and of all recommendations the panel decides to make to the Center Director.

(b) The Center Director or his or her designee shall review the recommendations of the P/PEP; approve, deny, or amend them; and notify the P/PEP; approve, deny, or amend them; and notify the P/PEP and the corpsmember of the decision reached (section 461(a)).

§ 684.81 Food service.

(a) Centers shall provide corpsmembers with meals, which shall be nutritionally well-balanced, of good quality, and sufficient in quantity. Military master menus may be used as guides.

(b) The Center Director shall see that food is prepared and served in a sanitary manner. All staff members who handle or prepare food shall meet State or local food handling requirements, whichever are stricter, and be free from communicable diseases as verified by medical examination.

(c) Centers shall charge all noncorpsmembers for food provided to them unless prior regional office approval has been obtained. No funds allocated for corpsmember food shall be used for this purpose. Such charges shall be sufficient to cover the cost of the food and its preparation.

(d) Center Directors shall see that dining areas are pleasant, sanitary, and well-maintained.

§ 684.82 Allowances and allotments.

(a) The Secretary shall periodically establish rates of allowances and allotments to be paid corpsmembers pursuant to sections 458 (a), (c) and (d) of the Act, and shall publish these rates as a Notice in the Federal Register.

(b) Centers operated under contract by the Commonwealth of Puerto Rico shall pay all allowances and allotments directly to corpsmembers or their allottees pursuant to contract provisions.

(c) In all other cases, the Center Director shall arrange for the payment of corpsmember allowances and allotments in the right amounts and at the right times by seeing that:

(1) All forms necessary to authorize such payment are correctly completed and submitted to the Finance Center pursuant to the interagency agreement between the Department of Labor and the Department of Defense; and that

(2) A system is established at the center for the prompt delivery to corpsmembers of allowance checks received from the Finance Center and for the prompt correction of any errors in the amount of such checks.

(d) Whenever an error is discovered in a form already submitted to the Finance Center, the Center Director shall notify the Finance Center immediately. After termination, if an overpayment is made in a corpsmember's final living and readjustment allowance payment because the center erroneously authorized a readjustment allowance, or failed to report monetary advances to a corpsmember that should have been deducted, or delayed the submission of correct forms, the Center Director shall reimburse the amount of the overpayment to the Finance Center. The Finance Center shall send any underpayment discovered directly to the terminated corpsmember.

(e) Pursuant to the interagency agreement, the Finance Center shall make accurate and timely payments and submit reports to the national office.

(f) Newly enrolled and readmitted corpsmembers shall receive the same initial monthly living allowance.

(g) Living allowances shall accrue from the date of initial departure for the center to the date of scheduled arrival home, except during periods of AWOL or leave without pay and allowances. Such allowances shall be paid semimonthly.

(h) Corpsmembers shall also receive a readjustment allowance for each 30 days of satisfactory participation in Job Corps after their termination from the program if they have remained in the Job Corps for at least 180 days in pay status or if they terminate after 90 days in pay status as program or maximum benefits completers. In the event a corpsmember dies, receives a medical termination, or enlists in the Armed Forces less than 90 days after enrollment, he or she shall be eligible for the accrued readjustment allowance. Such corpsmembers shall not be considered program completers (section 458(c)).

(i) Center Directors may, after seeing that enough readjustment allowances are in the corpsmember's account, and at the corpsmember's request, pay advances of up to 75 percent of readjustment allowances to those who have been assured of placement, and other advances up to specific dollar amounts, in accordance with instructions to be issued by the Job Corps Director.

(j) Corpsmembers who are placed prior to leaving the center shall receive the readjustment allowance in a lump sum directly from the Finance Center after termination. Corpsmembers who are not placed on jobs prior to leaving the center shall receive any owed readjustment allowance through a placement agency.

(k) Corpsmembers may authorize a deduction from their monthly readjustment allowance, which shall be matched by an equal amount from Job Corps funds and sent as an allotment each month by the Finance Center to their spouse or dependent child(ren) if such spouse or dependent child(ren)

reside in a State, the District of Columbia, or any other area subject to the jurisdiction of the United States. In the case of dependent children, the payee of the allotment may be the individual or organization responsible for the care of the children. The screening agency or the center shall verify whether the proposed allottee is a spouse or dependent child of the corpsmember. Only one allotment shall be authorized per corpsmember. Allotments shall be paid for each month the corpsmember authorizes an allotment during his or her enrollment. The Finance Center shall send checks to allottees at the beginning of each month following accrual. When necessary for payment of child care prior to receipt of the initial allotment check, the center may advance the first payment from the petty cash or imprest fund. Such advances shall be repaid by the corpsmember from the last allotment check or the readjustment allowance, depending upon arrangements made between the corpsmember and the center.

(l) The following kinds of deductions shall be made when applicable from a corpsmember's living and/or readjustment allowance provided that at least half of the earned living allowance per pay period is paid to the corpsmember:

(1) Social Security taxes (FICA), unless an exemption from withholding form has been filed;

(2) Income taxes;

(3) Fines levied by the Center Director;

(4) The corpsmember's share of attorney's fees as delineated in § 684.91(h);

(5) The value of transportation documents if these are lost or unused and not returned;

(6) Authorized contributions for an allotment; and

(7) Any indebtedness the youth has charged against the living and/or readjustment allowances.

(m) Corpsmembers who are AWOL or on administrative leave without allowances shall not be paid living or readjustment allowances for such period (section 458 (a) and (c)).

(n) In the event of a corpsmember's death, any amount due, including the amount of any unpaid readjustment allowance, shall be paid in accordance with the provisions of 5 U.S.C. 5582 (section 458(c)).

(o) Instructions for further implementation of this section shall be found in the Job Corps Forms Preparation Handbook.

(p) The Center Director shall establish a system to insure the security of and accountability for all allowance checks and money obtained to cash those checks for corpsmembers. Checks shall only be cashed after verified endorsement by the payee. The Center Director shall also see that each corpsmember receives a copy of the payroll deduction slip, which is received from the Finance Center on the last pay period of each month, covering the allowances received during that month.

§ 684.83 Clothing.

The center operator shall provide clothing for all corpsmembers by means of a cash allowance and by government issue, in accordance with instructions issued by the national office. Conditions under which clothing shall be provided include:

(a) A cash allowance shall be given to each corpsmember for the purchase of clothing. The national office shall state the amounts to be provided during the first and second years of enrollment, with the second year's allowance being substantially less than the first.

(b) Special clothing and such personal protective equipment as is necessary for vocational training shall be issued to all corpsmembers. Such issue clothing shall remain the property of the government, and, except for expendable or wornout items and in emergency situations, shall be returned to the center by the corpsmember either on termination or when no longer needed.

(c) Transferring corpsmembers shall take all appropriate issue clothing with them to the new center.

§ 684.84 Tort and other claims.

(a) Corpsmembers shall be considered Federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671, 2672, 2677–9) (section 465(a)(3)). In the event a corpsmember is alleged to be involved in the damage, loss or destruction of the property of others, or of causing personal injury to or the death of other individual(s), claims may be filed with the Center Director by the owner(s) of the property, the injured person(s), or by a duly authorized agent or legal representative of the claimant. The Center Director shall collect all of the facts, including accident and medical reports and the names and addresses of witnesses, and submit the claim for a decision to the Regional Solicitor's Office. All tort claims for $25,000 or more shall be sent to the Associate Solicitor for Employee Benefits, 200 Constitution Avenue NW., Washington, D.C.

(b) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the government, a claim for such damage may be submitted by the owner(s) of the property, the injured person(s), or by a duly authorized agent of the claimant to the office of the Regional Solicitor, which office shall determine if the claim is cognizable under the Tort Claims Act. If it is determined not to be cognizable, the Regional Solicitor shall consider the facts and may settle the claim pursuant to section 465(b) of the Act in an amount not to exceed $1,500.

(c) The Job Corps may pay claims to corpsmembers for lost, damaged, or stolen property, up to a maximum of $300 when such loss is not due to the negligence or the corpsmember. Corpsmembers shall always be compensated for losses when they are the result of a natural disaster or when the corpsmember's property is in the protective custody of the Center Director, which shall always be the case when a corpsmember is AWOL. The Center Director shall file such claims with the ETA regional office for a determination on the claim and the regional office shall promptly notify the corpsmember and the center of its determination.

(d) Claims shall be made on Standard Form 95, the Claim for Damage or Injury form, or a similar document, supported by necessary justification. Instructions for completion and submission of the Claim for Damage or Injury form shall be found in the Job Corps Forms Preparation Handbook and in the Department of Labor's regulations under the Federal Tort Claims Act at 29 CFR Part 15.

(e) When appropriate, the Center Director shall assist corpsmembers to claim against other sources; e.g., from shippers and insurance companies, or through civil court proceedings.

§ 684.85 Federal employees' compensation.

(a) Corpsmembers shall be considered Federal employees for purpose of Federal Employees' Compensation (FEC) pursuant to section 465(a)(2).

(b) Resident corpsmembers shall be considered to be in the "performance of duty" as Federal employees from the date they leave their homes and begin authorized travel to their center of assignment until the date of their scheduled arrival at the official travel destination as authorized by the Center Director upon their termination from the Job Corps. During this period the youths shall be known as corpsmembers, and this period shall constitute their period of Job Corps enrollment. During this period corpsmembers shall be considered as in performance of duty at

all times, during any and all of their activities, 24 hours a day, 7 days a week except as described in (d) of this section.

(c) Nonresident corpsmembers shall be considered to be in the performance of duty as Federal employees from the time they arrive at any scheduled center activity or program until they leave such activity or program.

(d) No corpsmember shall be considered as being in performance of duty status if he or she is absent without official authorization (AWOL) or after arrival home on administrative leave without allowances.

(e) In computing compensation benefits for disability or death, the monthly pay of a corpsmember shall be deemed that received under the entrance salary for a grade GS–2 employee, and 5 U.S.C. 8113 (a) and (b) shall apply to corpsmembers.

(f) Compensation for disability shall not begin to accrue until the day following the date on which the injured corpsmember completes his or her Job Corps termination.

(g) Whenever a corpsmember is injured, develops an occupationally related illness, or dies while in the performance of duty, the Center Director shall immediately comply with the procedures set out in the Employment Standards Administration regulations at 20 CFR Chapter 1. The Center Director shall also see that a thorough investigation of the circumstances and a medical evaluation are made, and shall see that required forms are filed with the appropriate Office of Workers' Compensation Programs (OWCP) district office. Application forms and instructions for their completion shall be found in the Forms Preparation Handbook.

§ 684.86 Social Security.

Corpsmembers shall be covered by Title II of the Social Security Act (42 U.S.C. 401 *et seq.*) and shall pay applicable Federal employment taxes (FICA) on their living and readjustment allowance (section 465(a)(1)).

§ 684.87 Income taxes.

(a) Corpsmembers shall be subject to income taxes pursuant to the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*) (section 456(a)(1)). For Federal tax purposes, the following shall be considered as income:

(1) The living allowance;

(2) The readjustment allowance, including any portion allocated for an allotment;

(3) The cash clothing allowance; and

(4) The value of government paid transportation provided to and from center in cases of home and emergency leave, and to home after termination.

(b) Corpsmembers shall not be subject to tax for the value of meal tickets and clothing issued to them, nor for that portion of the allotment contributed by the government to the allottee.

(c) The Center Director shall see that any forms required to effect income tax deductions and withholding exemptions are completed by the corpsmember. Instructions for completion shall be found in the Forms Preparation Handbook.

(d) Except as provided in paragraph (2)(e) of this section, income taxes shall be withheld from the foregoing allowances and benefits in accordance with the appropriate tax withholding tables and rules.

(e) If it is anticipated that the corpsmember's taxable income for a complete year will be insufficient to be taxable, the Center Director shall see that corpsmembers are told of their right not to have taxes withheld. This shall be done during orientation for new and readmitted enrollees and during the month of January for all corpsmembers who were in the program on the previous December 31. Center Directors shall provide W–4, Exemption From Withholding, forms and assist those who elect to claim exemption to file the forms.

(f) Wage and tax statements shall be sent to corpsmembers by the Finance Center, pursuant to the interagency agreement.

§ 684.88 Emergency use of personnel, equipment, and facilities.

(a) If Center Directors are requested by public officials to provide emergency assistance when there is a threat of natural disaster, the Center Director may authorize such assistance, after seeking advice from the regional office if he or she wishes such advice. Center Directors may ask corpsmembers to volunteer their services to help in such cases, and shall arrange for any added center expenses consequent to such assistance to be borne by the benefiting organization.

(b) Upon the completion of each emergency project, the Center Director shall submit a summary report of the work done to the regional office.

§ 684.89 Limitations on the use of corpsmembers in emergency projects.

(a) No corpsmember shall participate in emergency relief:

(1) In connection with labor shortages, strikes, riots, or civil disturbances;

(2) On private property to promote the self-interest of private individuals or groups, except as incidental to authorized emergency work;

(3) If it lasts long enough to detract from his or her educational and vocational training, in which case rotation of corpsmembers should be considered; or

(4) For fire suppression except when the corpsmember volunteers, has completed a fire control training program, is 18 years of age and in good physical condition, is used only in support of compensated fire-fighters, and is paid by the benefiting organization at the same rate as other fire-fighters. Corpsmembers shall not work for a greater number of hours per day than other fire-fighters and shall be relieved from the fire on the same rotation basis as other organized crews. Corpsmembers may work in mopping-up operations but not for more than 5 days after the fire is controlled.

§ 684.90 Corpsmember absences.

(a) Corpsmembers shall accrue annual leave at a rate of 1 calendar day for each pay period provided that the corpsmember has been in pay status for a total of 8 or more days during the pay period. Accrual time shall begin on the day the corpsmember initiallly departs for a center and end on the date of his or her scheduled arrival home or at a place of employment, whichever is agreed upon by the corpsmember and the Center Director.

(b) Annual leave shall continue to accure during periods of home, emergency, and administrative leave with allowances and shall be suspended only during absences without approved leave and adminstrative leave without allowances.

(c) Corpsmembers shall not be paid at termination for accrued unused leave.

(d) Corpsmembers may use accrued leave at any time subject to the approval of the Center Director. Annual leave with transportation at government expense, however, shall be allowed only after the corpsmember has spent 180 days in pay status in Job Corps, and only once per year of enrollment (section 458(b)).

(e) Corpsmembers shall not be charged annual leave for travel time to and from home and center by the most direct route. Saturdays, Sundays, and holidays shall not be charged as annual leave.

(f) Corpsmembers shall also be eligible for emergency leaves of up to 12 days each. The Center Director may grant such leave, with transportation at government expense, so that a corpsmember may visit his or her family in case of a death, imminent death, or serious illness or injury, after

verification of the emergency. However, if the corpsmember has had a home leave or an emergency leave at government expense within the preceding 180 days, prior approval for the new leave shall be obtained from the regional office. After verifying the need, the Center Director may extend emergency leave beyond 12 days. Such extensions shall be without allowances.

(g) The Center Director may grant administrative leave to corpsmembers with allowances and transportation at government expense for a period up to 30 days for situations such as:

(1) Securing necessary medical or dental treatment away from the center if that treatment has been prescribed by an appropriate health professional; such administrative leave may not be used to delay processing a medical termination without prior approval of the regional office;

(2) Being temporarily housed off-center as a precaution against harm or injury to self or others;

(3) Appearing in court as a complainant or witness;

(4) Appearing before a probation or parole board;

(5) Attending or participating in special projects or civic functions; and

(6) Unavoidable transportation delays.

(h) Administrative leave without allowances or government paid transportation shall always be granted to corpsmembers who are absent due to incarceration until termination pursuant to § 684.36(a)(7) or their return to the center (section 458(b)). Such leave may also be granted by the Center Director to a corpsmember for other reasons with the prior approval of the regional office.

(i) The Center Director may authorize a pass for a corpsmember for up to 72 hours including time in transit. Holidays shall not be included as part of the 72 hours. Such a pass shall not be considered as leave. Transportation shall be at the corpsmember's expense.

(j) The Center Director shall establish and maintain a system that accounts for the whereabouts of each corpsmember at all times. The system shall include a record of excused and unexcused absence from all scheduled activities, passes taken, and all absences from the center, and an accurate leave record, showing leave accrued and taken.

(k) When it is determined that a corpsmember is AWOL, the Center Director shall immediately begin attempts to locate him or her, and shall notify concerned parties such as parents, courts, and the screening agency.

(l) Whenever a residential corpsmember is absent from the center for 24 hours or more, such corpsmember's personal belongings that remain at the center shall be inventoried and secured by the Center Director.

§ 684.91 Legal services to corpsmembers.

(a) The Center Director shall make every effort to assure corpsmembers of effective and competent legal representation in criminal cases and in certain civil cases, and to provide additional legal services as needed (section 456(a)). Whenever feasible, the Center Director shall develop a program to assist corpsmembers to obtain free or low-cost legal assistance.

(b) The Center Director shall establish a system for obtaining local attorneys willing to represent corpsmembers facing criminal and civil proceedings. A list of such local attorneys shall be maintained and updated as necessary. The list should include public defender and legal service attorneys.

(c) The Center Director shall see that corpsmembers who are to be interrogated by law enforcement officials as suspects in criminal cases are advised that they may secure a lawyer to represent them during the interrogation. Job Corps shall pay for such legal services if the corpsmember wants those services.

(d) Job Corps shall help provide legal services for corpsmembers in criminal cases and shall pay for such services in all criminal cases except:

(1) When a corpsmember is AWOL when the offense is committed;

(2) When the corpsmember is arrested for an offense committed before entering Job Corps;

(3) When the corpsmember is charged with a second felony after being convicted of a first felony committed while he or she was enrolled in Job Corps;

(4) When the corpsmember is arrested for a third misdemeanor after conviction of the first two, and legal services were provided by Job Corps in the first two cases;

(5) When a corpsmember is charged with an offense when he or she is on administrative absence without allowances, and while awaiting trial for a former offense; or

(6) When the corpsmember refuses to authorize deduction of his or her share of the legal fees from his or her allowances. In this event, the Center Director shall attempt to arrange for legal representation by an attorney appointed by the court or by an attorney who will represent the corpsmember without charge.

(e) The Center Director shall immediately report to the regional office all instances in which legal services are denied under paragraph (d) of this section and may request a waiver of the requirements of paragraph (d) by the regional office.

(f) After the corpsmember freely selects an attorney, the Center Director shall immediately inform the attorney that the corpsmember is a member of the Job Corps, that the Job Corps wishes the corpsmember to receive adequate legal representation and, if possible in criminal cases, pretrial release from custody, and that the client is the corpsmember, not the Job Corps, although payment of fees will come from Job Crops (with subsequent deductions from the corpsmember's allowances pursuant to paragraph (h) of this section).

(g) The Job Corps shall compensate attorneys in criminal cases for reasonable expenses. Compensation shall be at the rates set forth in the Criminal Justice Act of 1964 (18 U.S.C. 3006A(d)) ($1,000 in felony cases and $400 in misdemeanor cases) unless additional payment is approved by the regional office. When an attorney represents two or more corpsmembers at the same time, payments per hour shall be prorated among the corpsmembers. Attorneys shall bill regional offices directly. Procedures for billing, and authorization of expenditures for private investigation, expert witnesses, special tests, etc., shall be established by agreement between the center operator and the regional office.

(h) The corpsmember's share of the attorney's fees in criminal cases and in civil cases other than commitment proceedings shall be computed by the regional office and shall be deducted from allowances at the rate of $5 per hour for the time spent by the attorney in court and $3 per hour out of court, up to a maximum of $50.

(i) In exceptional circumstances, Job Corps may pay appellate counsel except for the appeal record, which the attorney should have prepared at the State's expense. Such payment shall be approved by the regional office before every level of the appeal. Recommendations of the attorney shall be seriously considered in these cases, and if the attorney believes a notice of appeal must be immediately prepared and filed, it may be done, and the attorney shall be paid for time spent in this effort.

(j) When a corpsmember entitled to legal services is arrested at a distance from the center, and the Center Director is unable to arrange for the provision of legal representation and bail, the regional office shall make such arrangements.

(k) The Center Director shall pay up to $50 for bail or purchase of a bail bond provided the corpsmember agrees in writing, prior to bail, to reimburse the Job Corps. Higher amounts shall have prior regional office approval.

(l) If the corpsmember agrees in writing, the Center Director shall advance the corpsmember up to $50 to pay fines, or higher amounts with the approval of the regional office.

(m) The Center Director, through local legal aid societies, etc., shall make every attempt to provide for free legal services to corpsmembers in civil cases. In exceptional cases involving a corpsmember, corpsmembers, or the center itself, the regional office may pay a reasonable and definite amount for legal expenses in civil cases (with subsequent deductions from the corpsmember's allowances pursuant to paragraph (h) of this section).

(n) If a corpsmember is awaiting the result of a pending criminal case in which Job Corps is paying for the attorney's services, the only allowable types of terminations are administrative terminations when withdrawal of parental consent occurs, termination by resignation, or AWOL termination.

(o) In cases where Job Corps is paying the fees, the Center Director will notify the attorney involved that payment by Job Corps for his services will cease as of the date of the corpsmember's termination.

(p) When a corpsmember is in jail or detention at a location near the center awaiting trial or serving sentence of 60 days or less, the Center Director shall visit or have a counselor or other appropriate senior staff member visit the corpsmember on a regular basis and shall provide any assistance needed in the area of health, welfare, safety, personal affairs, education, and training. The visitor shall offer to assist the corpsmember in developing a study program, in supplying books and training materials, and shall review and evaluate the corpsmember's study and training progress.

§ 684.92 Voting rights.

(a) The Center Director shall develop a written plan to enable eligible corpsmembers and staff to vote either locally or by absentee ballot.

(b) Such a plan shall include provisions that the Center Director shall:

(1) Advise staff and corpsmembers of their rights and responsibilities relative to voting and provide them with current absentee registration and voting information;

(2) Disseminate voting information provided by Job Corps;

(3) Furnish assistance on voting procedures, including the service of someone authorized to attest to required oaths;

(4) Encourage and assist eligible voters to send for absentee ballots;

(5) Arrange for ballots to be marked in secret and safeguarded afterwards;

(6) Arrange for the ballots to be mailed on time; and

(7) Provide transportation to the appropriate polls for corpsmembers eligible to vote within a reasonable distance from the center, whenever feasible.

§ 684.93 Rights relative to religion.

The right to worship or not worship as they choose shall not be denied to any corpsmember. Religious services may not be held on-center unless the center is so isolated as to make transportation to and from community religious facilities impractical. If religious services are held on-center, no compensation shall be paid to those who conduct such services, corpsmembers shall be instructed that they are not obligated by Job Corps to attend such services, and services shall not be confined to one religious denomination.

§ 684.94 Right to privacy.

(a) Each corpsmember shall be entitled to privacy in keeping with the right to privacy and other Federal, State, and local laws, and in accordance with these regulations.

(b) The Center Director shall see that each corpsmember's area, including any storage for belongings, remains private. Neither corpsmembers nor their belongings shall be searched or examined except under the following special circumstances:

(1) General inspections of corpsmember's living quarters and storage areas shall be conducted periodically;

(2) Searches for unauthorized goods as defined in § 684.10 may be conducted if the Center Director has good reason to believe these are being hidden on the center. The Center Director shall assert his or her reasons for such a search in writing to the regional office immediately before or after the search. Searches for narcotics or other dangerous drugs shall follow the procedures set out by the regional director of the Drug Enforcement Administration. Unauthorized goods will be handled in accordance with center agreement with law enforcement entities and/or regulations of the Alcohol and Tobacco and Firearms Division of the U.S. Department of the Treasury;

(3) Searches may be conducted for evidence to be used in criminal prosection. These shall always be done by a law enforcement officer with a search warrant, except that searches may be done by persons other than law-enforcement officers and/or without a search warrant when delay would endanger the physical well-being of corpsmembers; and

(4) No search shall be wider than that necessary to accomplish the specific purpose of the search. However, if unauthorized goods are found as a result of a search, these may be confiscated. If evidence that may be used in a criminal prosecution is discovered, the corpsmember involved is to be advised of his or her right to remain silent and to an attorney pursuant to section 684.91(c).

(c) Personal information contained in center records, as well as any private verbal or written communications between corpsmembers and staff members shall be held in confidence. When it is necessary for a staff member to inform others about personal information given to him or her by a corpsmember, the corpsmember shall be informed of this and the reasons therefor. Information from confidential records, which shall include at least health records, counseling records, and juvenile court records, may be made available to other staff with the prior consent of the corpsmember by those who maintain the records if this is judged to be in the best interests of the corpsmember. No copies of information contained in confidential records shall be made or kept by anyone except as provided in section 684.95.

§ 684.95 Disclosure of information.

(a) The Center Director shall respond to all requests for information or records during a corpsmember's enrollment. After termination, the regional office to which the corpsmember's personnel record has been sent shall respond. These results shall be treated as requests under the Freedom of Information Act and the Privacy Act of 1974, and shall be handled according to the regulations at 29 CFR Part 70 and 70a.

(b) No information shall be given out which would constitute an invasion of a corpsmember's right to privacy. Doubtful cases shall be resolved in favor of the corpsmember's right to privacy. Difficult problems shall be resolved after consultation with the appropriate Regional Solicitor. Except as otherwise provided in this Part, no records or information of any kind about the corpsmember shall be released to anyone without the corpsmember's

signed consent, and, in the case of a corpsmember under the age of majority, the signed consent of the parent or legal guardian.

(1) A corpsmember's name, age, and date of entry may be released to news media or members of the public;

(2) On request, parents or guardians and probation or parole officers may be given information regarding a corpsmember's general medical condition and/or achievement in the program;

(3) In the event of a medical or psychiatric emergency, the center physician may approve release of medical, behavioral, and/or counseling information necessary for the treatment of a corpsmember;

(4) A corpsmember's name, address, age, former residences, dates of entry and/or termination, forwarding address, and other leads to locate a corpsmember or his or her family may be released to State or Federal law enforcement agencies or other government investigators; and

(5) Placement agencies shall be given a summary of each corpsmember's academic and vocational achievement and general biographical information but no information from confidential records. Such agencies may give this information to prospective employers, schools, and training institutions when this will assist in the placement of a corpsmember.

(c) Corpsmembers shall have access to their records, and information from a corpsmember's record shall be supplied to the corpsmember on request. If a corpsmember, or the parent of a corpsmember under the age of majority, objects to any information in the record, he or she may request a meeting with the Center Director to request that such information be removed or modified. Should this request be denied, the Center Director shall prepare a written statememt of the reasons therefor, and the corpsmember and his or her parent or legal guardian, as appropriate, may also put in writing their objection to the content. These documents shall be included in the corpsmember's personnel record.

(d) The Regional Solicitor shall be consulted and he or she shall make a prompt determination of the appropriate response whenever a subpoena is received to produce a corpsmember's records, to testify concerning such records, or to testify concerning a corpsmember's activities while enrolled in Job Corps.

(e) No corpsmember records or information about corpsmembers shall be supplied to any researcher, nor shall corpsmembers or staffmembers participate in any study, directly or indirectly, unless the research project has been cleared through the regional office and the Job Corps Director. In the case where research is to be done at a center, prior arrangements shall be made with the Center Director. All staff and all corpsmember participation shall be voluntary.

(f) No research project shall be approved unless the researcher guarantees to protect the anonymity of all staff and corpsmembers involved in any presentation of the results of such study.

§ 684.96 Disciplinary procedures and appeals.

(a) The Center Director, with center staff and corpsmembers participation as set forth in the Corpsmember Handbook, shall be responsible for developing reasonable rules and regulations for corpsmembers. These shall include but not be limited to requirements that:

(1) Reasonable care be exercised in the use of center facilities and equipment;

(2) Possession of unauthorized goods as defined in § 684.10 be prohibited;

(3) Gambling on-center be prohibited;

(4) Maintaining or operating private vehicles on-center be prohibited to residential corpsmembers, and be limited to center parking facilities for nonresidential corpsmembers, when these are available. In this case, Center Directors shall establish rules for the use of such parking facilities;

(5) Coercive or assaultive behavior be prohibited;

(6) The lending of money at interest be prohibited;

(7) Persistent disobedience of center regulations and serious disruptive behavior be prohibited; and

(8) Repeated or prolonged absences from duty be prohibited.

(b) The Center Director, with the assistance of the center standards officer appointed by the Center Director, and with staff and corpsmember participation as set forth in the Corpsmember Handbook, shall be responsible for developing reasonable sanctions and for appropriately matching such sanctions to the breaking of the rules set out in the Corpsmember Handbood (section 459(a)). Such sanctions shall include at least the following:

(1) Spoken and written reprimands;

(2) Suspension of privileges, except that suspension of dining hall, canteen, voting and religious privileges shall be prohibited;

(3) Fines, except that no corpsmember shall be fined more than $5 per offense or per pay period and there shall be no carryover of fines from one pay period to another. When a fine is imposed, the Center Director shall give the corpsmember a receipt, forward the fine with a copy of the receipt to the Corpsmember Association Welfare Council, and retain a record of the fine for audit purposes. Fines shall be used sparingly as sanctions;

(4) Restriction to center grounds not exceeding 30 days;

(5) Deferral of a living allowance increase, or in exceptional cases, reduction down to the minimum monthly living allowance prescribed by the Secretary, but not in amounts to exceed $5 in any one 30-day period (sections 458 (a) and (c));

(6) Restitution by repair or payment for property damaged willfully or through negligence or misapporpriation, except that no corpsmember shall be charged more than $300 for such damage;

(7) Disciplinary discharges from the Job Corps except that no disciplinary discharge shall be given to a corpsmember:

(i) Prior to a center review board hearing, unless the corpsmember has been convicted of a serious crime or has been confined under sentence for more than 60 consecutive days;

(ii) Against whom criminal charges are pending;

(iii) If a medical discharge for physical or psychiatric reasons may appropriately be substituted therefor;

(iv) Solely for health-related problems; and

(v) Solely for nonparticipation in the program.

(8) Forced resignation from the program shall not be a proper sanction; and

(9) Sanctions relating to the possession and/or distribution of drugs shall be structured so as to take account of the policy of assistance set forth in § 684.68.

(c) Each Job Corps center may establish corpsmember councils, consisting of at least three elected corpsmembers per floor or dormitory, pursuant to procedures set forth in the Corpsmember Handbook. If established, the corpsmember councils, with guidance from the center standards officer, shall handle minor rule infractions as defined in the Corpsmember Handbook. Corpsmembers sanctioned by the corpsmember council may appeal to a center standards officer.

(d) Each Center Director shall appoint one or more staffmembers as center standards officers. Such center standards officers shall be administrative personnel who do not

serve in any center security capacity, and shall:

(1) Make decisions in all appeals by corpsmembers from corpsmember councils; and

(2) Make decisions in all cases involving major rule infractions as defined in the Corpsmember Handbook.

(e) In all cases the center standards officer shall:

(1) Notify the corpsmember orally and in writing of the specific charge or charges against him or her;

(2) Conduct as investigation of the charges;

(3) Make a determination of the corpsmember's culpability or nonculpability;

(4) Impose the appropriate penalty if culpability is found; and

(5) If a disciplinary discharge is believed warranted, recommend such to the center review board.

(f) Corpsmembers shall have the right to appeal decisions of the center standards officers to the center review board.

(g) Each center shall establish a center review board pursuant to procedures set forth in the Corpsmember Handbook. The center review board shall have an odd number of members, chosen from different program areas. The review board should include at least one corpsmember, to be chosen through an elective procedure or appointed by the corpsmember government. The board shall not include the Center Director or Acting Center Director, Deputy Director, the corpsmember's counselor, or a standards officer who has already ruled in the case. Decisions shall be by simple majority.

(h) In each case the center review board shall hold its hearing within 10 days after a case is referred to it during which time it shall:

(1) Notify the corpsmember in writing at least 24 hours before the hearing of the date and time of the hearing, of the specific charges against him or her, and the penalties that may be imposed, and shall attach to the notice a list of the corpsmember's rights to:

(i) Have 24 hours in which to prepare a defense;

(ii) Be represented at the hearing by a staffmember of his or her choice, who shall be appointed at the corpsmember's request by the Center Director;

(iii) File a written answer or make a verbal reply to the allegation(s) made, with or without the assistance of others;

(iv) Call witnesses on his or her behalf at the hearing;

(v) Confront, question, and cross-examine witnesses against him or her; and

(vi) Stand silent at the hearing without risk of any penalty therefor;

(2) At the hearing, the center review board shall consider all relevant evidence and determine the corpsmember's culpability or nonculpability;

(3) If culpability is found, assess the appropriate penalty;

(4) If a disciplinary discharge is found warranted, recommend such to the Center Director;

(5) Sign an accurate summary of the hearing and its recommendation, and provide a copy thereof to the Center Director and the corpsmember; and

(6) Inform the corpsmember in writing of the right to send a written statement to the Center Director, using staff assistance if he or she chooses, stating the reasons the corpsmember feels the board's recommendation is unjustified.

(i) The Center Director shall review all cases where a recommendation has been made by the center review board. The Center Director shall make a decision solely on the record of the hearing and the corpsmember's statement, if any, and, based upon these, may modify or reverse the findings and/or penalties. The Center Director shall notify the corpsmember and center review board of his or her decision in writing, and if the Center Director decides upon a disciplinary discharge, shall attach to the corpsmember's copy of the decision a notice, including the address of the appropriate regional office, that the corpsmember has the right to:

(1) Appeal the discharge decision to the regional office appeal board, stating in writing why the corpsmember believes the decision to be unfair;

(2) Have assistance in the preparation of the appeal including legal counsel if desired by the corpsmember; and

(3) Have 30 days to submit the appeal (section 459(b)).

(j) In all cases in which the Center Director decides upon a disciplinary termination, the Center Director shall immediately forward the entire case record to the appropriate regional office, attention: Job Corps appeal board. If the center review board has recommended against a disciplinary termination, but the Center Director overrides such recommendation, the corpsmember's termination shall be considered as an appeal to the regional appeal board, whether or not the corpsmember submits an appeal to it. Instructions for completing forms required for this record shall be found in the Job Corps Forms Preparation Handbook. If the corpsmember initially accepts a disciplinary termination and is terminated, but later wishes to appeal, he or she shall send an appeal statement to the center or to the regional office appeal board. This, however, must be done within 30 days of termination.

(1) Pending the decision of the regional office appeal board, the Center Director may:

(i) Retain the enrollee at the center; or

(ii) Send the enrollee home on administrative leave with travel at government expense but without allowances, provided that the Center Director certifies to the regional office appeal board in writing, with a copy to the corpsmember, that the corpsmember's continued presence at the center would be a source of serious disruption.

(k) The regional office shall make a decision solely on the record and shall notify the corpsmember of the decision regarding his or her appeal within 15 working days of the receipt of the appeal record. If the record is inconclusive the regional office appeal board shall remand the case to the center review board for completion of the record.

(l) In the event that the regional office appeal board decides in favor of the corpsmember, the corpsmember shall be notified that he or she has been reinstated, and the following actions shall occur:

(1) If the corpsmember has been retained at the center, pending appeal, the regional office should arrange immediately for the corpsmember's transfer unless retention at the center is approved by the Center Director; or

(2) If the corpsmember has been sent home, the center to which he or she is or was assigned shall arrange with the Finance Center for restoration of all allowances as of the day he or she began administrative leave or was terminated, in the event such termination occurred prior to making an appeal. The regional office should arrange for the corpsmember's immediate return to the center if approved by the Center Director, or for a transfer with transportation at government expense to another center.

(m) Corpsmembers may be transferred to centers in the same or a different region, but the receiving center shall offer the same vocational training as the corpsmember was taking at the former center.

(n) The decision of the regional review board shall be the final decision of the Secretary. The provisions of 20 CFR 676 Subpart F do not apply to the disciplinary procedures and appeals described in this section.

§ 684.97 [Reserved]

§ 684.98 Cooperation with agencies and institutions.

(a) Each center, regional office, and the national health office staff shall establish a broad network of referral sources such as health, rehabilitation, and social service agencies for medically terminated corpsmembers. If a social service agency such as a court or welfare department has jurisdiction over a corpsmember who is to be referred to another source after medical termination, the center shall get concurrence of the agency in any referral.

(b) Centers and regional offices shall maintain cooperative relationships with screening and placement agencies.

(c) Each center shall establish cooperative relationships, including written agreements whenever feasible, with Federal, State, and local law enforcement agencies having jurisdiction over the centers to insure police backup support for emergencies at the center and the orderly processing of criminal offenses. The written agreements shall set out procedures for handling any compliants that may arise concerning law enforcement and the center.

(d) Centers should establish relationships, whenever feasible, with educational institutions to arrange for GED examinations and/or low-cost off-center vocational training and to develop placement opportunities.

(e) Each center shall established a community relations program pursuant to section 460 of the Act, to include establishment of a community relations council. These councils shall include corpsmember representation. The program shall have such objectives as:

(1) Giving community officials advance notice of changes in center rules, procedures, or activities that may affect the community;

(2) Affording the community a voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to corpsmembers;

(3) Providing center staff and corpsmembers with full and rapid access to relevant community groups such as law enforcement agencies, educational institutions, and agencies that work with young people in the community;

(4) Arranging recreational or similar events in which both local residents and corpsmembers may participate;

(5) Developing job opportunities for corpsmembers in the community where feasible;

(6) Providing corpsmembers an opportunity for participation in community service projects; and

(7) Providing community residents with opportunities to work with corpsmembers, either on-center or in the community.

(f) Each Job Corps center shall, to the extent feasible, establish cooperative relationships with other local employment and training and employment and training-related agencies, including apprenticeship programs, prime sponsors under the Act, and other agencies operating programs funded through the Department of Labor.

§ 684.99 Job Corps training opportunities for CETA grantees.

(a) Grantees under Titles II, III, IVA and VI of the Act may purchase services and training authorized under their titles of the Act from a Job Corps center; such a transaction shall be called a buy-in.

(b) In participating in the buy-in program, grantees shall make expenditures in accordance with the regulations under their appropriate titles of the Act except as otherwise permitted by paragraph (f) of this section. In participating in the buy-in program, Job Corps shall make expenditures in accordance with the provisions of this Part.

(c) A buy-in plan shall be established by a negotiated agreement between a grantee and a center operator. Prior to execution of the agreement by the Jobs Corps center operator, the center operator must obtain the written approval of the appropriate ETA office.

(d) Two types of buy-in plans may be negotiated:

(1) *Job Corps Enrollees (Residential and Nonresidential).* Participants who meet the eligibility criteria for Job Corps under Title IVB of the Act, as well as the eligibility criteria of the grantee's title of the Act, may be fully enrolled in Job Corps as residents or nonresidents. Such enrollees shall be treated as and receive the same services, protections, allowances, etc., as regular corpsmembers except as otherwise provided in paragraph (f) of this section.

(2) *Trainees (Nonresidential).* Participants ("trainees") who are not eligible for, or who do not want or require residential services must meet the eligibility criteria of the grantee's title of the Act only, and may receive training from the Job Corps center operator under the following options:

(i) *Vocational Trainees.* These will be trained in the requisite entry-level skills for the vocation designated in the buy-in agreement.

(ii) *Basic Education and GED Trainees.* These will be individually assessed for reading, arithmetic, job-seeking skills, and general education development and trained to meet entry-level requirements for specified job clusters and/or a GED certificate, as appropriate.

(iii) *Combined Basic Education-Vocational Trainees.* These will receive both specified vocation and education training.

(iv) *Other options include:*

(A) Grantee use of center facilities, including nights or weekends.

(B) Grantee use of centers for training youths during the summer with charges to the grantee based on the pro-rata hourly costs.

(e) Allocation of Funds. Slots available for purchase by grantees shall be over and above the current budgeted center capacity.

(f) Prime Sponsor Responsibility. In addition to paying for training at Job Corps centers, grantees shall be responsible for spending funds received under their own titles of the Act to recruit enrollees and trainees, provide them with support services prior to their arrival at centers and following the completion of training, provide their transportation to and from the center, and provide job placement assistance. Grantees shall also supply associated administrative services in accordance with the regulations at 20 CFR 676 Subpart C as agreed upon with the center. In addition, grantees are authorized to pay any transportation costs for buy-in enrollees in accordance with the provisions of this Part.

(g) The terms of a buy-in agreement involving trainees shall state the amount and system of payment, and shall include provisions that:

(1) Pay and allowances for trainees shall be borne by the grantee and paid in accordance with regulations under the grantee's title of the Act;

(2) The center will assure that its liability insurance covers the trainees;

(3) Trainees shall be covered by the workers' compensation required by the regulations under the grantee's title of the Act;

(4) As appropriate, the center shall provide trainees with first aid, emergency health care, and initial outpatient visits. First aid and emergency health care shall mean care provided by professionals or lay persons to prevent death or aggravation of serious illnesses or injury, including ambulance service. Initial outpatient visits shall mean single visits to the dispensary or sick call for the purpose of the initial evaluation of an acute health condition. Treatment will be limited to

that which can be given by the center staff at the time of the visit. Any additional evaluation, diagnosis, or treatment must be obtained through other arrangements by the prime sponsor or the trainee; and

(5) Every trainee under the age of majority shall furnish a statement from a parent or legal guardian agreeing to permit Job Corps to provide the health care set forth in the agreement. Trainees who are over the age of majority shall themselves sign a similar statement.

(h) *Accounting.* For buy-ins involving trainees, the center shall maintain separate accounts for funds received under each title of the Act. Contract centers shall report all buy-in funds received on the Job Corps Form MA 2–111, Center Financial Status Report, and on Form MA 2–223A, Center Financial Report under "Other Income (identify separately by source)." CCC's shall report funds on Form MA 2–223B, Center Financial Report. Grantees shall account for funds expended in support of a Job Corps buy-in in accordance with current CETA procedures and cost categories.

(i) *Reporting Credits.* Grantees participating in the buy-in plan will receive credit for the recruiting, training, placement, and support services provided trainees and enrollees and will report activity under the buy-in agreement in accordance with current procedures on reporting and accountability. The Job Corps centers will provide the data required by the grantee data system to allow the reports for credit to be completed. The Job Corps center will report on total center population as currently required and will, thus, receive credit for serving enrollees and trainees.

Subpart F—Applied Vocational Skills Training (VST) Through Work Projects at Civilian Conservation Centers (CCC's)

§ 684.100 Applied vocational skills training (VST) projects.

Applied vocational skills training (VST), provided in an actual working setting, involving authorized construction or other projects that result in finished facilities or products, shall be the major vehicle for the training of corpsmembers at Civilian Conservation Centers (CCC's) and shall be used whenever feasible at other centers where contractual provisions for planning and reporting shall apply. Centers may also perform VST public service projects for nearby communities and for other Job Corps centers, and may also conduct approved, applied VST training related to center support, such as food preparation, facilities maintenance, or automotive repair.

§ 684.101 Annual VST plans.

(a) All CCC center operators shall develop annual VST plans. Such plans shall include proposed VST projects for the coming fiscal year. In the development of such plans, each center operator shall consult with the ETA regional office regarding the appropriateness of the plan and each project therein. If the proposed projects are to involve the use of instructors from participating labor unions, during the planning stage the center operator shall obtain written concurrence from the instructors and/or the union for each project in which union training is involved.

(b) Center operators shall describe in their annual plan all technical plans and designs for individual VST projects that have already been completed or are in progress. The annual plan shall also delineate the nature and amount of the funds that have been used or are being used for these plans and designs.

(c) CCC center operators shall estimate the costs of their annual plan and individual VST projects so that if all proposed projects are approved the total costs will not exceed nor vary greatly from the total funds specified for VST project purposes for each center in the annual DOL budget request.

(d) CCC center operators shall schedule their planning so that they are able to submit completed annual plans and individual project proposals in duplicate to the appropriate ETA regional office by no later than May 1 of each year.

(e) Each CCC annual VST plan shall include a Center Summary listing all proposed projects intended to comprise the center's total VST program for the upcoming fiscal year together with summary cost factors, and estimates of the appraised value of the completed projects and of corpsmember months of training planned. In addition to the Center Summary, each plan shall formally propose every individual VST project planned in accordance with the requirements of sections 684.102 and 103.

§ 684.102 VST project proposals.

(a) Every VST project proposal from a CCC shall be included in the annual VST plan and shall show evidence that:

(1) To the maximum extent possible, the CCC operator has planned all VST projects, especially projects involving major efforts to repair, rehabilitate, or replace on-center buildings and facilities, as corpsmember VST projects within the framwork of the center's vocational skills training program;

(2) The center operator has given due consideration to the need for projects, the nature, size, and scope of which provide for the widest possible range of skills development based on the approved vocational course offerings at the center, and that the training inherent in the proposed projects is geared to job placement in the particular trades for which the corpsmembers are being trained in their center vocational courses;

(3) The center operator has chosen projects in accordance with the following order of priorities:

(i) Projects to design, plan, and carry out on-center rehabilitation and construction in preparation for and as a basis for the execution of conservation projects;

(ii) Conservation projects to be carried out on Federal, State, county, or municipal public lands. These projects shall be primarily directed to the conservation, development, and management of public natural resources or recreation areas and shall include partial or total construction or rehabilitation of permanent facilities related to the management of such resources or areas. Such VST projects shall be built primarily around the construction trades and may include work on public benefit facilities, road construction, recreation areas, and public agency facilities and housing;

(iii) Center staff housing construction or improvement projects;

(iv) Public service projects for nearby communities; and

(v) Repetitive or production-oriented projects that provide prevocational experience or short-term or inclement weather activities, such as the production of cattle guards, picnic tables, and other such items. Such projects should be used sparingly;

(4) The center operator has planned all off-center projects so that a maximum of corpsmember training is provided relative to the funds to be expended. Proposals for such projects shall show that all buildings, facilities, roads, etc., or features thereof, are not more costly than would be provided by the benefiting agency from its own funds were Job Corps not involved. To the extent possible, proposals shall include as costs to Job Corps only those items that directly relate to corpsmember training. Benefiting agencies should provide the maximum possible technical assistance, materials, and other resources. Off-center construction project proposals may include the cost of only essential heating, plumbing, and electricity. They shall not include the

cost of ancillary features, facilities, equipment, or refinements such as landscaping, carpeting, air-conditioning, black-topping of roads, decorations, furnishings, etc. that do not contribute to or involve corpsmember training. Neither shall proposals include the cost of technical assistance in the planning or designing of such ancillary features;

(5) Public service projects will generally benefit the public in the vicinity of the center and are designed to promote community support for and involvement with the center, a hospitable reception for corpsmembers in the community, and training for corpsmembers in civic and community responsibilities. The proposal shall also describe the results of efforts the center operator has made to enlist community support and resources, including materials, technical assistance, and cooperative labor. Center operators shall not propose community service projects that:

(i) Are not on public lands, or that promote, preserve, or protect the economic self-interest of private individuals or groups, or community service organizations, whether profit or nonprofit;

(ii) Involve capital construction that would normally be handled through city funding, industry funding, or bond issue; or

(iii) Exceed 15 percent of the total corpsmember months of the center's annual vocational skills training projects;

(6) VST projects proposed will not displace presently employed workers or impair existing contracts for service; and that

(7) VST projects proposed will meet Federal and State safety and health standards.

(b) Each VST proposal shall include:

(1) A complete description of the proposed project, or modification thereof, involving $1,000 or more of direct project costs. The proposal shall contain a clear and separate delineation of all component costs of the project such as materials, equipment operation, transportation, equipment to be installed, rentals, and subcontracted services. Quantity, unit, and unit costs shall be given whenever possible;

(2) The costs of technical assistance and support necessary for specific VST project planning and design, compliance inspection, or technical supervision. In describing technical assistance needs and costs, center operators shall indicate specifically the nature of the technical assistance, the number of persons involved, the task(s) to be performed, and the time and expenses involved;

(3) The distance of the project from the center, the types of training involved in the project, the corpsmember months of training for each type of training, any aspects of the project that will not involve corpsmember training, the estimated appraised value of the completed project, and the identity of the agency to be benefited by the project;

(4) Long-term accounting information, including detailed breakdown of cost estimates, in prorated form, for the entire life of the project for any carry-over project proposed to have a life span of more than 1 year. The center operator shall provide this information in each subsequent (fiscal year) submission of the project proposal;

(5) Separate identification of each small project in a group of similar projects that involve under $1,000 each of VST funds. These similar projects may be combined under one heading; e.g., "miscellaneous carpentry projects," in a single project proposal with summary treatment of the information required in paragraph (h) (1) and (2) of this section; and

(6) For proposals that involve major rehabilitation or new construction of on-center facilities, in addition to the description required in paragraph (b)(4) of this section:

(i) A clear justification for the need thereof, and information on building type, location, size (outside dimensions), interior layout, and functional use;

(ii) A statement about how the proposed use is planned to be accommodated while improvements/construction are underway;

(iii) Evidence that, before such rehabilitation or new construction was proposed, multiple utilization, reduction, or consolidation of existing space was considered for efficiency and economy; and

(iv) Evidence that the facility, with regard to new or additional space, was included in, and has received prior national office approval, as part of the center's facility/site development plan in the annual review of such plans for CCC's (§ 684.133(g)(3)).

(c) Separate project proposals may be submitted for technical assistance costs involving only advance survey, planning, and design of projects contemplated for periods beyond the upcoming fiscal year. These proposals shall include, to the extent possible, a description of the nature, size, scope, location, and estimated costs of the project under consideration. Any approval of the advance technical assistance proposal shall not be construed as a prior commitment by Job Corps to the actual project proposal, which must be submitted, fully described, at the appropriate time in the annual VST plan.

(d) For those portions of proposed projects that are beyond the capability of the center's vocational skills training program as specified in the annual DOL budget request, center operators shall include with the project proposal full justification for:

(1) Proposed costs for technical assistance that are in excess of 20 percent of the total project cost. Operators shall not submit such costs on an "averaged out" or group-of-centers basis;

(2) Proposed costs for specialized subcontracted services that are in excess of 15 percent of the total project costs; and

(3) Proposed costs of equipment to be permanently installed that are in excess of 15 percent of the total project costs.

(e) Center operators shall not include in any VST project proposal the costs of any subcontract, the purpose of which is to accelerate a project to meet a completion date.

(f) Center operators shall not include in VST proposals such high-cost items as bridge construction, major culvert construction, road paving, or sewage facilities to be accomplished by contract if:

(1) As part of a VST project, the costs are greatly in excess of the percentages outlined in paragraph (d) of this section; or

(2) Such items are not part of a proposed VST project.

(g) Center operators shall not include in VST project proposals the costs of administrative direction, management assistance, or overall program planning and support provided by the center operator above the center level when such costs are not directly related to the planning or execution of any specific project.

(h) Proposals shall not include the costs of such items as training aids, audiovisuals, texts, films, projectors, or specialized training equipment.

(i) Proposals for spike camps and/or off-center residential facilities shall be submitted only as a portion of a specific VST project proposal. The center operator must show a clear relation between the training involved in the whole VST project and in the spike camp or off-center residential facility part of the project. In addition, the spike camp and/or off-center residential facility section of the proposal must give evidence that:

(1) The proposed spike camp or off-center residential facility shall not be permanent or maintained beyond the life of the related VST project;

(2) The spike camp or off-center residential facility shall be 75 miles or less from the center except in extraordinary specified circumstances;

(3) The costs involved shall be separately recorded and analyzed by the center operator for cost effectiveness as part of the overall center operation;

(4) the spike camp shall be the center's only operational spike camp;

(5) Education and supervision, including residential and support services, shall be commensurate with those at the center and will be supplied at all times during the life of the project;

(6) Adequate specified communications shall exist between the spike camp or off-center residential facility and the center; and

(7) No corpsmembers who are assigned to the beginning reading program shall be assigned to spike camp operations.

§ 684.103 VST project review and approval.

(a) Project approval by the ETA regional and/or national office shall constitute authority for the center operator to proceed with approved projects only, and only within funding limitations.

(b) All center operators shall submit VST proposals through agency channels to the appropriate ETA regional office, which shall have approval authority for most VST plans and projects. However, the type of proposals listed below shall be forwarded by the ETA regional office, with the ETA regional office's comments and recommendations, to the national office through agency channels for final decision:

(1) Exceptional center recreational facilities projects, such as swimming pools an ice skating rinks;

(2) Projects for which the costs of specialized technical assistance, subcontracted services, and/or equipment to be permanently installed are in excess of limits allowed by § 684.102(d). Center shall not develop detailed plans or advertise for bids on such projects until the national office has approved the projects;

(3) On-center projects that involve requests for capital outlay funds to supplement VST funds;

(4) Any project proposals about which legal questions have been raised;

(5) Projects for which national office interpretations of policy are requested by the ETA regional office or by the center operator; and

(6) Project proposals that involve the establishment or continued operation of spike camps or off-center residential facilities intended to provide support for VST projects.

(c) Notice of ETA regional and/or national office approval or disapproval of the annual VST plans and project proposals shall be transmitted in writing to the operator by no later than July 1 of each year. The specific amount for which each project proposal has been approved shall be indicated in the notice.

(d) The ETA regional office and/or the national office shall disapprove, in whole or in part, any VST proposal that is in violation of these regulations. If a VST plan or project proposal or part thereof has not been approved, the notice shall include the reasons.

(e) If an annual plan or project proposal or part thereof has been disapproved by the ETA regional office, the center shall drop the project unless it is required by the ETA regional office to amend and resubmit the plan, or it may appeal the decision to the national office. If asked to amend and resubmit, the center shall do so. The national office shall provide to the regional office, and the regional office to the national office, copies of all VST projects reviewed, together with appropriate review decisions and related correspondence.

§ 684.104 Modification of approved VST projects.

Once a VST project has been approved, the center operator shall insure that its size and scope remain essentially the same throughout the entire life of the project. Any proposed increase in cost of more than 15 percent above the amount originally approved shall be submitted for approval in the same manner as are new projects.

§ 684.105 Cancellation or deferment of approved VST projects.

Center operators shall provide immediate notice to the ETA regional office of the cancellation or deferment of already approved VST projects. In such cases, they shall simultaneously submit plans for proposed alternative projects to maintain the center's program at adequate training levels.

§ 684.106 VST budgeting.

Center operators shall maintain VST project funds as a separate center budget line item and shall maintain strict accountability for the use or nonuse of such funds. Center operators shall not transfer VST project funds to any other center budget category or program activity without the approval of the Job Corps national office or except as provided for by specific agreement.

§ 684.107 Monitoring VST project progress.

(a) The ETA regional office shall monitor every aspect of approved VST projects to insure the best possible use of allocated VST funds toward project progress and completion.

(b) The ETA regional office shall report immediately to the national office any instance of unauthorized projects or expenditures being undertaken.

§ 684.108 Public identification of VST projects.

All VST projects in progress and all completed projects and products shall be prominently marked as having been produced by Job Corps centers. All movable products shall be identified by either affixing a marked noncorroding metal plate or by branding/stamping the product with the Job Corps name and/or emblem. Buildings, campgrounds, or other permanent projects shall be marked with appropriate signs identifying the project and stating that it is presently being built or has been built by Job Corps.

§ 684.109 Supplementation of VST project funds.

(a) In exceptional cases, when the cost greatly exceeds the percentages of VST funds allowed in § 684.102(d), center operators may submit specific requests for capital outlay funds to supplement VST funds.

(b) Such separate capital outlay fund requests shall be combined and submitted simultaneously with the initial VST project proposal, shall contain a full justification of the need, and shall be limited to cases of on-center major facility rehabilitation/replacement construction projects or portions thereof, such as subcontracts for specialized services and/or purchase of equipment to be permanently installed, which are clearly beyond the scope of the center's vocational training capability; e.g., transformer installation, and certain aspects of sewer installation.

(c) Centers shall not request capital outlay funding for building construction, services, or equipment to be installed in center facilities, if these are to be accomplished or installed totally by subcontract.

(d) No capital outlay funds shall be requested in order to merely accelerate a project's completion date.

(e) Centers shall not request capital outlay funds in order to save VST funds. Capital outlay funds shall not be requested as a substitute for those percentages of VST project funds that are for specialized subcontracted services and/or purchase of equipment

to be installed in on-center construction projects. The operator shall make every effort to reduce to an absolute minimum the costs that cannot be handled through VST funding. In rehabilitation or new construction, existing items of installed equipment shall be used as long as possible. Requests for new equipment shall be for essentials only, and shall contain ample demonstration that existing items of equipment cannot be used in rehabilitated or newly constructed buildings.

(f) Capital outlay fund requests shall not be submitted with or as part of the regular, annual requests for equipment replacement.

(g) Capital outlay fund requests for the purpose of supplementing VST funds shall identify the total amount of capital outlay funds needed for the entire life of the related VST project, prorated by fiscal year if the project spans more than one year. The request shall contain a clear and separate delineation of the costs per item for which the capital outlay funds are requested.

(h) Only the national office may approve a request for capital outlay funds to supplement VST funds in accordance with § 684.103(b)(3).

Subpart G—Experimental Projects

§ 684.110 Experimental projects.

(a) The Job Corps Director, at his or her discretion, may undertake experimental, demonstration, or research projects for the purpose of promoting greater efficiency and effectiveness in the Job Corps program.

(b) Experimental, demonstration, and research projects shall be developed after any appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with prime sponsors in the communities where they will be carried out.

(c) The Job Corps Director may arrange for these projects to be undertaken jointly with other Federal or federally assisted programs. Funds otherwise available for activities under those programs shall, with the consent of the head of any other agency concerned, be available for projects under this section to the extent that they include the same or substantially similar activities.

(d) The Job Corps Director is authorized to waive any provision of this Part 684 that the Director finds would prevent the carrying out of elements of experimental and development projects essential to a determination of their feasibility and usefulness.

Subpart H—Administrative Provisions

§ 684.120 Program management.

(a) Prevention of fraud and program abuse. The Center Director shall establish and use internal program management procedures sufficient to prevent fraud and program abuse. He or she shall insure that sufficient, auditable, and otherwise adequate records are maintained to support the expenditure of all funds under the Act.

(b) Basic personnel standards for operators. The Center Director shall:

(1) Develop a written staffing plan that shall provide for an efficient and effective management structure, with clearly delineated lines of responsibility and authority. The plan shall provide for flexibility of staff use to meet center and individual corpsmember needs. Staffing plans for contract centers shall be submitted to the contracting officer or his or her designee for approval. Centers operated by Federal agencies shall determine center staff positions in accordance with program needs that are established for centers in consultation with and with the approval of the Job Corps Director;

(2) Recruit and hire only qualified staff. Whenever possible, teachers and health professionals shall be properly certified, licensed, or accredited, including certification, licensing, or accreditation in the State in which the center is located. When necessary for the provision of required health care, the regional office may also approve the employment of health professionals who are certified, accredited, or licensed in any State. Employment of full- or part-time physicians, dentists, and mental health professionals shall be subject to the approval of the regional office, in consultation, if necessary, with the national office health staff. If a center is unable to employ certified teachers due to unusual local conditions, a waiver of the certification requirement may be requested from the regional office. The Job Corps Director shall be notified of all such waivers granted;

(3) Develop and maintain personnel management policies, including plans for hiring, supervision, and evaluation of staff, in accord with specifications agreed to in the operator's contract or agreement with the Department. Federal civil service and agency regulations shall apply to centers operated by Federal agencies;

(4) Utilize the services of work study students, interns, volunteers or other types of supplementary staff only after submission of a letter of intent and obtaining the approval of such by the regional office;

(5) Establish labor management relations in accordance with agency guidelines in the case of Federally operated centers and in accordance with the provisions of the National Labor Relations Act in the case of contractors. The Job Corps shall not undertake conciliation, mediation, or arbitration of disputes between center operators and labor organizations, nor shall the Job Corps pay legal or other fees generated by such disputes as direct costs against the contract; and

(6) Always appoint an acting Center Director in his or her absence. If a Center Director terminates, the center operator shall appoint an Acting Center Director until a Center Director is appointed.

§ 684.121 [Reserved]

§ 684.122 Staff training.

(a) The Center Director shall provide necessary staff training based on a center-developed annual training plan. Each plan shall set out anticipated training needs, including the anticipated number of staff members to be trained, where and when the training is proposed to be performed, and the estimated cost.

(b) Centers operating under interagency agreement shall obtain approval of training plans using the method established by their Federal agency, which shall see that a copy of the approved plan is forwarded to the ARA. Contract centers shall submit their plans to the ARA for approval.

(c) Staff training shall include, as a minimum:

(1) General orientation to the Job Corps program and its corpsmembers' background;

(2) Inservice training on a regular basis;

(3) Supervisory training; and

(4) The specialized training cited in §§ 684.60(a)(3) and 684.124(b).

(d) The center shall maintain a record of training completed by each staff member. A copy of the record shall be placed in the relevant staff member's personnel file.

§ 684.123 Corpsmember records management.

(a) Center operators shall establish a uniform system for the maintenance of ongoing records for each corpsmember during enrollment and for the disposal of such records after termination.

(b) During enrollment, information kept about the corpsmember shall include separate running accounts of the corpsmember's educational and vocational training, counseling, recreational and dormitory activities, health history, and administrative

records covering such matters as data pertaining to enrollment, allowances and allotments, leave records, a resumé of corpsmember's qualifications; and disciplinary actions taken. Each and every copy of a corpsmember's health, court, and counseling records shall be maintained in a confidential manner. Documents retained during the corpsmember's enrollment shall be maintained in the appropriate departments with the exception of administrative records, including the Corpsmember Profile Record or equivalent computer document, which shall be maintained by the Center Director or his or her designee.

(c) Upon termination, the various files shall be purged of extraneous material. Any statements from courts and correctional institutions shall be immediately destroyed. An official terminated Corpsmember Personnel Record shall be assembled in one folder. Such record shall contain the following forms and documents:

(1) Affixed to the left side of the folder, the Designation of Beneficiary, Notification of Next of Kin, Travel Authorization and Voucher, Allotment Determination, Living Allowance and Allotment Change Notice(s), record of clothing issued, Initial Allowance Authorization, Corpsmember Profile Record or equivalent computer document, and Notice of Termination;

(2) Affixed to the right side of the folder, any appeals record(s), parental consent(s) obtained, the Corps Data Sheet, request(s) for readmission, the Certificate(s) of Attainment, the training achievement record(s), and placement related forms and documents; and

(3) The health record, to be assembled and reviewed for completeness by the center health staff, sealed in an envelope marked confidential, and inserted in the folder. The health folder shall include at least those health forms found in the Job Corps Forms Preparation Handbook which are applicable to individual corpsmembers and any other documents concerning the medical, dental, and mental health treatment of the corpsmember during enrollment.

(d) The counseling record, including an initial counseling assessment of personal and social status and pertinent notes about subsequent sessions and related services, shall not be included in the Corpsmember's Personnel Record. It shall be retained at the center for 6 months after termination and then destroyed.

(e) Except in the event of a corpsmember's death, when the entire terminated Corpsmember Personnel Record shall be sent to the national health office within 10 days, the Center Director shall forward the official records within 5 days to the regional office having jurisdiction in the State to which the corpsmember has returned.

(f) Instructions for completing and distributing all forms necessary to the compilation of the Corpsmember Personnel Record shall be found in the Job Corps Forms Preparation Handbook.

§ 684.124 Safety.

(a) The Center Director shall see that corpsmembers are not required or permitted to work, be trained, or receive services in buildings or surroundings or under conditions which are unsanitary, hazardous, or lack proper ventilation. Whenever participants are employed or trained for jobs they shall be assigned to such jobs or training in accordance with appropriate health and safety practices. Center Directors shall provide appropriate protective clothing for corpsmembers in working and training.

(b) The inservice training program for staffmembers shall include training in occupational safety and health standards.

(c) The Center Director shall also see that the water supplies meet fire protection requirements based upon the recommendations of the National Board of Fire Underwriters and that such water supplies shall normally have a fire flow of 500 gpm for a period of 2 hours.

(d) The regional office shall see that safety and health inspections of every work place and training area are conducted at least annually pursuant to the Department of Labor's regulations under the Occupational Safety and Health Act at 29 CFR 1960.26(d).

§ 684.125 Environmental health.

(a) Center Directors shall adhere to Federal, State, and local regulations concerning environmental health. Routine environmental health inspections of dormitories, food preparation and serving areas, and water and waste treatment facilities, when these are not part of a municipal system, shall be performed at least once a week by the center physician or his designee. The Center Director shall also arrange for formal environmental health inspections by qualified noncenter personnel pursuant to § 684.133(c) of this Part and the Job Corps Forms Preparation Handbook.

(b) When nonmunicipal water supplies are used:

(1) These shall be adequate for the center's needs, and shall satisfy the latest U.S. Public Health Services Regulations on Drinking Water Standards (42 CFR 72.201–207);

(2) Before the construction or renovation of a water supply system, the Center Director shall consult the standards of regulations of State and local or other health authorities, and shall obtain approval of design, specifications, and construction procedures from them. Before construction or renovation is begun, engineering specifications on all water treatment processes, including their efficiency, shall be sent to the national health office through the regional office for review;

(3) The Center Director shall maintain records that shall show the amount of water treated, amount of chlorine used, daily free chlorine residual, and other data pertaining to water treatment. The Center Director shall arrange for all necessary bacterial and chemical tests to be performed by State and local health authorities with the exception of the daily routine residual chlorine test, which shall be done by center staff;

(4) Job Corps centers shall comply with the water quality and related standards of the State and with the standards established by the Federal Water Pollution Control Act, 33 U.S.C. 1151 et seq.; by Executive Order 12088, (1978), and by the Environmental Protection Agency;

(5) The Center Director shall keep records of the water treatment system pursuant to standards set by the Environmental Protection Agency and local authorities, and shall call waste water treatment problems to the attention of the appropriate Environmental Protection Agency coordinator;

(6) The Center Director shall see that septic tanks are inspected by appropriate noncenter personnel at least once a year;

(7) All installations owned by or leased to the Job Corps shall be designed, operated, and maintained so as to conform to Federal air quality standards, including those found in Executive Order 12088, (1978).

(c) Food handling practices at centers shall meet local and United States Public Health Department standards; all meat products shall meet U.S. Department of Agriculture standards; and pesticides shall not be used where food is prepared or served.

(d) Insecticides shall be used only in conformance with State and Federal pesticide laws including the regulations of the Environmental Protection Agency.

§ 684.126 Security and law enforcement.

(a) Unless otherwise provided by the Job Corps Director, he or she, in coordination with regional offices and Job Corps centers, shall assist in

negotiating agreements between State, local and Federal law enforcement agencies with respect to procedures necessary to enforce criminal laws on centers which are under concurrent Federal-State jurisdiction (section 464(d)).

(b) The Center Director shall take necessary steps to protect the security of corpsmembers, staff, and property on-center, on a 24-hour-a-day, 7-day-a-week basis. These steps shall include:

(1) Provision of staff security officers as necessary;

(2) Establishment of plans for handling any serious incident or group disturbance involving immediate danger to life, limb, or property, which shall include use, as appropriate, of any of the following measures to gain control of the situation and restore order;

(i) Placement of corpsmembers who are physically ill or emotionally disturbed in an appropriate medical facility for diagnosis and emergency treatment;

(ii) Placement of corpsmembers on administrative leave pursuant to § 684.90(g);

(iii) Establishment of agreements with law enforcement agencies and summoning them to restore order and make arrests if necessary; and

(iv) Removal of involved corpsmembers for behavioral reasons to an isolation facility, either on- or off-center, which has previously been approved for use by the regional office. A staff member shall continuously supervise a corpsmember during all periods of isolation. Such isolation shall:

(A) Not be used as punishment, and individuals shall be released as soon as their behavior ceases to be dangerous;

(B) Be ordered only by the Center Director. Security personnel may restrain corpsmembers, but only for so long as it is necessary to bring them under control; and

(C) Not exceed 12 hours without approval of the Center Director, based upon a recommendation from a physician or mental health professional. Complete records of all cases of isolation shall be maintained by the Center Director. A written statement of the reason for a corpsmember's isolation for more than 12 hours shall be signed by the Center Director and the physician or mental health professional and placed in the corpsmember's personnel record.

(c) The Center Director shall prohibit the presence of mace and guns on center except in the case of deputized security officers, who may carry guns as otherwise permitted by law.

(d) The Center Director shall have authority to determine what visitors may come onto the center and under what conditions.

§ 684.127 Job Corps forms and documents.

(a) Job Corps shall require deliverers of Job Corps services to complete and distribute only those forms found in the Job Corps Forms Preparation Handbook.

(b) The Center Director shall see that an up-to-date library of all documents and other materials relevant to the center's operation is maintained at the center. It is suggested that the library include copies of the statutes and regulations cited in this Part, Job Corps technical assistance materials, handbooks, guides, audio-visual aids, and training kits. The Center Director shall also see that required forms and educational and vocational training supplies are available to staff and corpsmembers as needed. The Job Corps regional offices shall instruct Center Directors and other interested parties about how to purchase such materials.

§ 684.128 Property management and procurement.

(a) Center operators shall establish and maintain a system for protection, preservation, maintenance, and disposition of Job Corps real and personal property so as to maximize its usefulness and minimize operating, repair, and replacement costs.

(b) All contract center operators shall comply with requirements of the Property Handbook for ETA Contractors. CCC's operated by Federal agencies that have their own property management standards and procedures may use these, after prior approval of the national office, providing that the system complies with the requirements of the ETA Handbook. CCC Center operators that use their own systems shall submit an annual inventory listing all nonexpendable equipment acquired in support of the center program to the Director, Office of Administrative Services, ETA, no later than May 15 each year.

(c) When equipment purchased with Job Corps funds is involved, federally operated CCC's shall obtain prior national office approval before:

(1) Transferring such equipment from one center to another;

(2) Lending or transferring such equipment from a center to an agency program other than Job Corps; or

(3) Disposing of such equipment.

(d) The Center shall maintain auditable records on all nonconsumable materials and equipment.

(e) Centers shall purchase all supplies and materials from government sources except when an excessive delay in receiving such supplies would occur, and when private purchase is more cost beneficial.

(f) Centers shall purchase, store, and administer medicines included on the controlled substance list of the Drug Enforcement Administration in accordance with the Controlled Substance Act of 1970 and regulations at 2 CFR Part 1300.

§ 684.129 Imprest and petty cash funds.

Federally operated centers shall establish auditable imprest funds, and contract centers auditable petty cash funds, and a system to insure the security of and accountability for those funds, for purposes such as:

(a) The corpsmember's initial allocation for living expenses;

(b) Payment of corpsmember fines and bail;

(c) Cashing corpsmember living allowance checks;

(d) Making partial payments of readjustment allowances to corpsmembers, pursuant to section 684.82(i);

(e) Necessary transportation expenses;

(f) Emergency medical or dental attention; and

(g) Emergency purchases of clothing and shoes.

§ 684.130 Contract center financial management and reporting.

(a) Each contract center shall complete and submit an Applied Cost Budget Report form to the regional and national offices within 30 days after the contract is signed, showing its planned monthly expenditures by line item for the first 12 months of the contract period. Thereafter, such a report shall be submitted by the end of the first month of any extension period for the next 12 months or to the end of the contract if this is less than a 12 month period. Applied Cost Budget Reports shall be revised quarterly as necessary to reflect changes in budget projections based on actual cost experience. These revised Budget Reports shall be submitted by the 14th day of the second month of the fiscal quarter. Quarterly budget revisions shall be submitted only if there has been a change from previously submitted budget projections.

(b) Each contract center shall submit monthly reports to the regional and national offices, by the 14th day of the month following the month covered by the report. Such reports shall be the Center Financial Report, the Center Financial Status Report, the Center Financial Analysis Report, and the Center Financial Exceptions Report. Instructions for completion and

distribution of these reports shall be found in the Job Corps Forms Preparation Handbook.

(c) Each center operator and each subcontractor shall maintain a financial management system that will provide accurate, current, and complete disclosures of the financial results of Job Corps operations, and will provide sufficient data for effective evaluation of program activities. Fiscal accounts shall be maintained in a manner that permits any reports required by Job Corps to be prepared therefrom.

§ 684.131 CCC's financial management and reports.

(a) The national office shall write annually to each agency operating a CCC requesting the submission of a budget estimate for the coming fiscal year. This budget request shall include guidelines for budget preparation, based upon applicable program objectives, standards, policies, requirements, legal constraints, funding limitations, and factors that determine or affect program scope and size.

(b) Based upon the budget request, each agency shall prepare and submit to the national office by May 15 of each year a budget estimate which shall include:

(a) A completed Capital Outlay Budget Request form for each center operated by the agency, in accordance with instructions found in the Job Corps Forms Preparation Handbook. Each canter's annual capital outlay budget shall be accompanied by a copy of the complete inventory of nonexpendable equipment on hand at each center, as required under § 684.128(b);

(2) A completed Center Operations Budget form for each center, or an equivalent agency form;

(3) A summary budget estimate for all centers operated by the agency, listing total budget estimates for each center, such totals to include estimates for capital outlay, center operations, vocational skills training, union training contract costs, and reimbursements;

(4) A program direction funds estimate calculated at 8 percent of all other funds excluding amounts for union contracts; and

(5) Completed copies of the Object Classification form and the Detail of Permanent Positions form.

(c) The national office shall approve a firm program operating budget for each agency for the coming fiscal year, developed upon the basis of the agency's budget request and budget estimate.

(d) After national office approval of the operating budget, each agency shall submit the following reports:

(1) A monthly Report on Budget Execution for each appropriation including the current year's appropriation, expired appropriations, and lapses or "M" account appropriations. The Report on Budget Execution for the current year's appropriation shall be detailed, showing the status of amounts for center capital, center operations, and program direction;

(2) A quarterly Center Financial Report for each center, to be submitted quarterly through agency channels to the national office, and to arrive no later than the 14th day of the month following the end of each fiscal quarter;

(3) An annual fiscal report detailing for each center the total assessed value of existing facilities and equipment and the estimated value of facilities and equipment that have been approved for future purchase or construction. Such reports shall arrive at the national office no later than December 15; and

(4) An annual fiscal VST project expenditures report that shall include a center-by-center account of the total amount of VST funds spent and, of that amount, the total amount of VST funds spent on center capital improvements. This report shall arrive in the national office no later than November 15.

§ 684.132 Audit.

(a) The Secretary of Labor, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Job Corps operators, deliverers, and their subcontractors that are pertinent to the Job Corps program for the purpose of making surveys, audits, examinations, exerpts, and transcripts.

(b) The Office of Inspector General shall be responsible for scheduling surveys, audits, or examinations of Job Corps operators, deliverers, and their subcontractors.

(c) The Secretary shall, with reasonable frequency, survey, audit, or examine, or arrange for the survey, audit, or examination of Job Corps operators, deliverers, or their subcontractors using Federal auditors or independent public accountants. Such surveys, audits, or examinations shall normally be conducted annually but not less than once every 2 years.

(d) Surveys, audits, and examinations done by the Secretary shall conform to the standards for audit of governmental organizations, programs, activities, and functions, issued by the Comptroller General of the United States, and to guides issued by the Secretary. Surveys, audits, or examinations contracted by the Secretary shall determine, at a minimum:

(1) Whether financial operations are properly conducted;

(2) Whether the financial reports are fairly presented; and

(3) Whether the available information indicates that applicable laws, regulations, and administrative requirements have not been complied with.

§ 684.133 General reporting requirements.

(a) Each center shall submit an accurate weekly corpsmember strength report (WCSR) by wire to the regional office and the national office to arrive no later than 11 a.m. each Thursday, covering the previous seven-day period from midnight Wednesday to midnight Wednesday. A WCSR log shall be submitted monthly to the regional office. Instructions for completion and distribution of this report and the WCSR log from which it is prepared shall be found in the Job Corps Forms Preparation Handbook.

(b) Each Center Director shall compile and submit reports to the national health office pursuant to instructions to be found in the Job Corps Forms Preparation Handbook. These shall outline the center delivery of health services, shall be submitted at the intervals specified, and shall consist of:

(1) A Program Description-Narrative that describes the general operations of the medical, dental, and mental health units;

(2) A Program Description-Time Distribution of Health Staff Activities, which lists all staff, contract, or fee personnel employed by the center for provision of health services;

(3) A Utilization Summary, organized by type of services, listing the number of medical, dental, and mental health services rendered to corpsmembers;

(4) A Quarterly Costs Incurred Report, describing all major categories of cost broken down by the function that incurred them.

(c) Each center, except as noted in paragraphs (b)(3) and (4) of this section shall simultaneously submit quarterly environmental health and safety inspection reports to the regional and national offices to be sent no later than 7 days after the required inspection occurs. Such reports, instructions for completion of which shall be found in the Job Corps Forms Preparation Handbook, shall be the results of:

(1) An inspection of food service facilities, including food supplies, food protection, personnel, food equipment and utensils, sanitary facilities and controls, and other kitchen/cafeteria facilities;

(2) An inspection of lodging, educational, recreational, vocational, and other functional facilities, including structural matters, fire protection, dormitories, lavatories, dispensary, infirmary, bedding, and recreational facilities;

(3) An inspection of water supply facilities, including water source, bacteriological examination, chlorination facility structure, coagulation and settling, filtration, physical tests, chemical tests, plumbing, storage, and the operation of treatment units. This report shall not be required of centers that use municipal water systems; and

(4) An inspection of waste treatment facilities, including type of treatment used, and operation of treatment units. This report shall not be required of centers that use municipal waste disposal systems.

(d) Each center shall submit forms and comply with reporting requirements of the Property Handbook for ETA Contractors as appropriate, except that federally operated CCC's may use their own reporting forms so long as these include the same information. Instructions for completion and distribution of such forms and reports shall be found in the property handbook.

(e) The Center Director shall establish and maintain an internal reporting system that shall insure that the Corpsmember Profile Record is continuously updated by the educational and vocational training staffs, and by the P/PEP panels.

(f) Each regional office shall submit to the national office a semiannual report as of March 31 and September 30, covering the status of vocational training programs at all contract centers in its jurisdiction. This report shall include a list of all vocational training offerings at each center with occupational code, the number of training slots in each, and additions or deletions of training programs at each center since the last submitted report.

(g) Each Federal agency that operates CCC's shall submit to the national and regional offices:

(1) An annual Status of Center Training Programs report as of March 31, which shall arrive at the national office by April 15. This report shall include a center-by-center inventory of vocational training offerings, total number of corpsmembers assigned to each, total number of corpsmembers each center believes it can effectively train in each, and the number of instructors for each, specifying whether these are subcontracted or nationally contracted union instructors, or employees of the center operator. Such report shall also include the number of corpsmembers assigned to occupational exploration or prevocational training programs. Instructions for the completion of this report shall be found in the Job Corps Forms Preparation Handbook;

(2) A center-by-center Semi-Annual VST Accomplishment Report as of March 31 and September 30, to be received at the national office no later than May 15 and November 15, and to include the VST project title and number, the type of project, number of corpsmember months used, and the estimated appraised value of each completed project;

(3) A center-by-center annual facilities/site development plan to arrive no later than November 1, including diagrams as of September 30, showing the location of all facilities on each center, the utilization of the facilities, and the square footage by use of each building. This plan shall also include similar data on facilities authorized by the national office for future construction; and

(4) A quarterly Manning Table Report to be received by the 14th day of the month following the end of each quarter. This report shall be an inventory of authorized positions, and actual numbers of staff on board. Instructions for completing this report shall be found in the Job Corps Forms Preparation Handbook.

(h) When a corpsmember is on probation or parole, the Center Director shall notify the youth's court representative when the corpsmember arrives at the center, is transferred to another center, is AWOL, returns from AWOL status, and is terminated. The Center Director shall also inform the court representative in the event of the corpsmember's arrest, and of the disposition made subsequent to such arrest, and shall provide the court representative with a progress report on the corpsmember's progress each time one is requested.

(i) Each regional office shall submit a report on medical terminations and transfers to the national health office at the end of each quarter.

(j) The Center Director shall immediately report any serious incident affecting corpsmembers or the center to the regional office with an information copy to the Job Corps Director. Critical incidents shall include such events as natural disasters, fires, or other emergencies that may endanger continued operation of the center or a part of the center; critical medical situations (§ 684.71); arrest or taking into custody of corpsmembers or staff, in the event the arrest of staff affects center operations or the corpsmembers; any civil disorder affecting the center, and any incident which may result in unusual public interest. The Center Director shall submit periodic status reports on each such incident until it is resolved.

(k) Each Center Director shall comply with reporting requirements concerning occupational illnesses and injuries established by applicable regulations under the Occupational Safety and Health Act (OSHA).

§ 684.134 Review and evaluation.

(a) Each center operator shall establish adequate program management for the purposes of continuous examination of the performance of its program. Such self-examination shall include performance in relation to the goals established pursuant to section 684.23 of this Part, and to the statistical data about other centers, which the regional and national offices shall make available.

(b) The regional office shall do an onsite evaluation of each center at least once per fiscal year to see that the center's performance meets the provisions of its contract or interagency agreement and is not in violation of this Part. The regional office shall prepare a written report of its findings and recommendations for corrective action and submit a copy to the Center Director. A copy of each such report shall be sent to the national office within 30 days after each evaluation.

(c) The national office shall conduct an operational review of each regional office at least once per fiscal year. Such reviews shall include at least evaluations of some centers, selected at the discretion of the Job Corps Director. The Director may also, at his or her discretion, arrange for additional reviews of any center at any time. Such center evaluations shall be for the purposes of determining the current operational status of these centers, the regional recruitment, support, placement, and transportation functions related to the centers in the region, and for assessing the center management aspects of regional operations. The national office shall prepare a written report of its findings and recommendations for corrective action and submit a copy to the regional office within 30 days after each operational review.

§ 684.135 State taxation of Job Corps contractors.

(a) Transactions conducted by private for-profit contractors attributable to the operation of Job Corps centers that such contractors are operating shall not be

considered as generating gross receipts (Section 466(c)). The term "Transactions" shall include:

(1) Sales to private for-profit contractors of tangible personal property or services for resale to the Government;

(2) Use of such property or services (whether purchased or Government furnished) by private for-profit contractors; and

(3) Reimbursements to such contractors for allowable items of cost, including materials, labor, overhead and general and administrative costs.

(b) Therefore, private for-profit contractors shall not be liable to any State or subdivision thereof with respect to gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts, in connection with any payments made to them for operating any Job Corps center; and such contractors shall not be liable to any State or subdivision thereof to collect or pay any sales taxes, or to pay any complementary use taxes imposed on the sale to, or use by, such contractors of any property or services in operating any Job Corps center.

Subpart J—A-95 Procedures

§ 684.140 Notification of intent.

(a) The national office shall notify State and area-wide planning and development clearinghouses of any intent to fund a Job Corps project or program if:

(1) An existing Civilian Conservation Center is to be relocated;

(2) A new Civilian Conservation Center is to be established; or

(3) A contract between a union and the Job Corps national office for the training of corpsmembers in specified trades is to be signed, except when this is a renewal under an existing contract.

(b) Regional offices shall notify State and areawide planning and development clearinghouses of any intent to fund a Job Corps project or program if:

(1) An existing contract center is to be relocated;

(2) A new contract center is to be established;

(3) A contract for the operation and management of a contract center is due to expire and another contract is to be let, except when the renewal of the contract is under the provisions of the existing contract; or

(4) A substantive modification is being made to an existing contract center's contract for the operation and management of the center. For purposes of this paragraph a substantive modification shall mean:

(i) The change of a center from one sex to coeducational.

(ii) Increases or decreases of the number by 25 percent or more of a center's contracted capacity.

(iii) Increases or decreases of a center's estimated cost for performance by 25 percent or more.

§ 684.141 Content and description of notification of intent.

(a) The notification of intent shall contain a brief description of the project or program to be funded or modified including:

(1) The type of organization or organizations that will be eligible to submit proposals for Job Corps funds, or that will be receiving Job Corps funds;

(2) The geographic location of the project or program;

(3) The estimated cost (unless cost information must be kept confidential to insure the integrity of the competitive award process), the target population and the services to be provided; and

(4) The estimated date of the funding or modification.

(b) When an existing center is to be relocated or a new center established, the written reports required by §§ 684.24(b)(1)(i), (c) and (d) covering the site survey shall be included in the notification.

§ 684.142 Review and comment.

(a) The notification of intent shall be sent to the appropriate clearinghouse(s) 30 days before the funding or modification as provided in § 684.140. Clearinghouses shall promptly submit any comments they may have to the regional office or national office, as appropriate. No Job Corps contract or substantive modification subject to these A-95 procedures shall be signed until clearinghouse comments have been received or until 30 days have elapsed from the date the notification of intent was sent, whichever is earlier.

(b) Clearinghouses shall be notified by Standard Form 424 of any major action taken on the projects or programs within 7 working days of such actions. Major actions shall include awards or withdrawals. If a clearinghouse has recommended against approval of a Job Corps contract or substantive modification subject to these A-95 procedures or recommended approval only with specific or major changes and if the recommendations are not accepted, the Standard Form 424 shall be accompanied by an explanation, in writing, of the reasons for the rejection of the recommendation.

(c) If a clearinghouse has recommended against approval of a project or program because it conflicts with or duplicates another Federal or federally assisted project, the regional or national office, as appropriate, shall consult with the Federal agency assisting the other project or program prior to approval.

Signed at Washington, D.C. the 30th day of October, 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-34296 Filed 11-5-79; 8:45 am]

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Part XI

Department of Labor

Employment and Training Administration

Indian and Native American Employment and Training Programs Under Titles I, II, III, IV, VI and VII of the Comprehensive Employment and Training Act

DEPARTMENT OF LABOR

20 CFR Parts 675, 688

Comprehensive Employment and Training Act; Regulations for Indian and Native American Employment and Training Programs Under Titles I, II, III, IV, VI, and VII of the Act.

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524) was signed into law on October 27, 1978. The new statute contains, in Section 4, provisions for transition from the programs in operation before the amendments to the programs authorized by the amendments. Effective on October 27, 1978, were new eligibility requirements for participation in public service employment activities, and the language amending the criminal provisions in Title 18 of the United States Code. Ninety days after enactment (that is on January 26, 1979) new eligibility criteria for participation in all public service employment (PSE) programs, and the limitations on PSE wages and wage supplementation were implemented. Also implemented on January 26, 1979, were the provisions relating to the prevention of fraud and abuse. This document contains final regulations for Indian and Native American programs under the Comprehensive Employment and Training Act. The purpose of this publication is to implement the changes made by the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

EFFECTIVE DATE: November 6, 1979.

FOR FURTHER INFORMATION: Mr. Alexander S. MacNabb, Director, Division of Indian and Native American Programs, U.S. Department of Labor, 601 D Street NW., Room 6402, Washington, D.C. 20213.

SUPPLEMENTARY INFORMATION:

Development of the Regulations

The development of the regulations has included significant and regular input from different segments of the Native American CETA system. Meetings were held in Washington, D.C. in November, December and January with representatives of Native American groups.

Major Changes in New Law

New eligibility requirements have been established for participants in Public Service Employment (PSE) programs funded under Titles II–D and VI of the Act. Average and maximum PSE wages have been established for all areas of the country. Provisions to prevent fraud and abuse have been strengthened. Changes have been made in the percentage of appropriated funds to be given to Native American programs under Sections 302 and 233 of the Act. A Title VII has been added to the Act to provide private sector opportunities for the economically disadvantaged.

Discussion of Comments

The Department published proposed regulations on Friday, May 11, 1979 at 44 FR 27812. The Department received many comments on the proposed regulations. All of them were given serious consideration and many of them were adopted, including the following:

(1) Improving linkages with other Indian and non-Indian CETA programs by including explicit language that would permit participants to transfer into a program operated by another Native American grantee or by a State or local governmental prime sponsor;

(2) Adopting a rule that allows Native American grantees to enroll a participant up to 45 days after the date on which the participant is declared eligible for CETA services as long as the participant has not taken a full-time, permanent, unsubsidized job after having been declared eligible;

(3) Removing several of the PSE restrictions in the proposed regulations that were not required by the statute, in order to permit sec. 302-funded PSE slots to involve non-entry level positions, to permit the Division of Indian and Native American Programs (DINAP) to waive the limitation on the duration of PSE participation for urban as well as tribal grantees, and to permit Title II–D and Title VI PSE funds to be used for non-PSE programs, including training programs and private sector initiative programs;

(4) Including language on audits requiring DOL to perform timely audits and requiring DOL to utilize personnel of special competence in Indian programs in performing audits; and

(5) Clarifying the language on calculating the administative cost percentage under the various programs to make clear that the percentage is computed on the basis of the funding allocation, rather than on the basis of actual expenditures. For example, if a Native American grantee receives an allocation of $100,000 in sec. 302 funds but spends only $95,000 during the grant period, the allowable administrative cost of 20 percent would be calculated against the $100,000, not against the $95,000.

In addition, changes have been made to conform these regulations to the Department of labor's grant administration regulations, which were published in final form on July 20, 1979 at 44 FR 42920. Finally, many editorial and clarifying changes have been made.

This regulation is not a major regulation as defined in the Department of Labor's guidelines implementing Executive Order 12044 *Improving Government Regulations.* The guidelines were published on January 26, 1979 at 44 FR 5576. Because this is not a major regulation; no regulatory analysis has been prepared.

Effective Date

The effective date of these regulations is not intended to preclude Native American grantees from implementing at an earlier date provisions authorized by the CETA amendments of 1978, for example, the use of PSE funds for training and other authorized non-PSE activities, and the pooling of administrative costs.

Accordingly, Title 20 of the CFR is amended as follows:

PART 675—INTRODUCTION OF THE REGULATIONS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

1. By amending § 675.3 *Table of Contents for regulations under CETA* by adding, in its proper place, the table of contents for Part 688, to read as follows:

§ 675.3 Table of Contents For Regulations Under CETA.

* * * * *

PART 688—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

Subpart A—Introduction

Sec.

688.1 Scope and purpose of the Indian and Native American employment and training programs under the Act.

688.2 Format for the regulations governing Indian and Native American programs under the Act.

688.3 Definitions.

Subpart B—Designation Procedures for Native American Grantees

688.10 Eligibility requirments for designation as a Native American grantee.

688.11 Designation of Native American grantees.

688.12 Alternative arrangements for the provision of services.

Subpart C—Program Planning, Application and Modification Procedures

688.17 Planning process.

688.18 Regional and national planning meetings.

§ 675.4 [Amended]

2. By deleting in § 675.4 *Definitions* the definition of "Federal Reservation".

PART 688—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

3. By adding a new Part 688 to read as follows:

Subpart A—Introduction

Subpart B—Designation Procedures for Native American Grantees

Subpart C—Program Planning, Application and Modification Procedures

Subpart D—Administration Standards and Procedures

Subpart E—Program Design and Management

Subpart F—Prevention of Fraud and Program Abuse

Subpart G—Complaints, Investigations, and Sanctions

Subpart H—Comprehensive Employment and Training Programs Under Title III, Section 302

Subpart I—Transitional Employment Programs for the Economically Disadvantaged Under Title II D

Subpart J—Countercyclical Public Service Employment Programs Under Title VI

Subpart K—Youth Community Conservation and Improvement Projects for Indian and Native American Youth

Subpart L—Youth Employment and Training Program

Subpart M—Summer Youth Program

Authority: Sec. 126 of the Comprehensive Employment and Training Act (29 U.S.C. 801 *et seq.*), unless otherwise noted.

Subpart A—Introduction

§ 688.1 Scope and purpose of the Indian and Native American employment and training programs under the Act.

(a) It is the purpose of Indian and Native American programs under the Act to provide job training and employment opportunities for economically disadvantaged, unemployed, or underemployed Indian and Native American persons which will result in an increase in their earned income, and to assure that traning and other services lead to maximum employment opportunities and enhanced self-sufficiency by establishing a flexible and coordinated system of programs conducted by Indian tribes, bands and groups and Native American and other organizations. Such programs shall be administered to maximize the Federal commitment to support growth and development of Indian and Native American communities and groups as determined by representatives of the communities and groups served.

(b) No provision of this part shall abrogate in any way the trust responsibilities of the Federal government to Indian tribes, bands or groups or other Native American groups. It is the express intent of the Department of Labor that nothing contained herein shall affect any claim not arising under the Act against the United States of any Indian tribe or its members, and further that no funds made available under this part to any Indian tribe, band or group shall be construed as the fulfillment partially or in full or any trust or treaty responsibility of the Federal government to Indian tribes, bands or groups nor shall such grant awards be offset against any debt or obligation now or in the future owed by the Federal goverment to such Indian tribe, band or group (sec. 302(h)).

(c) Nothing contained in this part nor the acceptance of funds under this part shall be construed as a waiver of soveriegn immunity or consent to the jurisdiction of any court by any Indian tribe, band or group.

(d) Because of the nature of the special relationship between the Federal government and most of those served by this part, programs shall be administered at the national level (sec. 302(b)(1)).

§ 688.2 Format for the regulations governing Indian and Native American programs under the Act.

(a) The regulations promulgated to carry out the Act are set forth in 20 CFR Parts 675–695. This Part deals with matters pertaining to the implementation and operation of Indian and Native American employment and training programs pursuant to Section 302 of Title III, Part D of Title II, Title VI, Parts A and C of Title IV and Title VII of the Act. It contains all the regulations under the Act applicable to Indian and Native American programs. In the interpretation of these regulations, Secretarial discretion shall be exercised consistent with the objectives of Section 302 of the Act including furtherance of the policy of Indian Self-Determination.

(b) The Director of DINAP, may, upon written application of a Native American grantee, waive any requirement of this Part not required by the Act. Such waiver shall be in writing, specifically stating any section(s) of this Part being waived, and the reason therefor.

§ 688.3 Definitions.

Academic Credit—means credit for education, training or work experience applicable toward a secondary school diploma, a post secondary degree, or an accredited certificate of completion, consistent with applicable State law, regulations, and the requirements of an accredited educational agency or institution.

Act—means the Comprehensive Employment and Training Act (29 U.S.C. 801 *et seq.).*

Appropriate Labor Organization—means a local labor organization that represents employees in the Native American grantee's service area in the same or substantially equivalent jobs as those for which Native American grantees provide, or propose to provide, employment and training under the Act.

Architectural Barriers—means physical conditions of a building, facility or other physical structure which reduce the accessibility to, or usefulness of, such building, facility or structure to handicapped individuals.

Artificial Barriers to Employment—means limitations (such as: age, sex, religion, parental status, credential requirements, criminal record, lack of child care, physical or mental status and absence of part-time or alternative working patterns/schedules) in hiring, firing, promotion, licensing and conditions of employment which are not directly related to an individual's fitness or ability to perform the tasks required by the job.

CETA—means the Comprehensive Employment and Training Act.

Community Based Organization—means a private nonprofit organization which is representative of the Indian and Native American communities or significant segments of communities and which provides employment and training services or activities (sec. 3(4)).

Comprehensive Employment and Training Plan (CETP)—means the entire grant application covering all programs under the Act, and the entire approved grant including any modifications approved by DINAP.

Construction—means the erection, installation, assembly or painting of a new structure or a major addition, expansion or extension of an existing structure and the related site preparation, excavation, filling and landscaping or other land improvements.

Consumer Price Index—means the "All Urban Consumer Index" as determined by the Bureau of Labor Statistics (BLS).

Contract—means a procurement instrument by which the Department, a Native American grantee or a subgrantee pays for property, services, supplies, materials or equipment.

Contractor—means any person, corporation, partnership, public agency, or other entity which enters into a contract with the DOL, a Native American grantee or subgrantee under the Act.

Department—means the United States Department of Labor (DOL) including its agencies and organizational units.

Dependent—means any person for whom, both currently and during the previous 12 months, the participant has assumed 50 percent of the person's support.

Director—means the Director of DINAP.

DINAP—means the Division of Indian and Native American Programs of the Department of Labor.

DOL—means the U.S. Department of Labor.

Economically Disadvantaged—means a person who is either:

(a) A member of a family which receives public assistance;

(b) A member of a family whose income during the previous 6 months on an annualized basis, was such that:

(1) The family would have qualified for public assistance, if it had applied for such assistance; or

(2) It does not exceed the poverty level; or

(3) It does not exceed 70 percent of the lower living standard income level;

(c) A foster child on whose behalf State or local government payments are made;

(d) Where such status presents a significant barrier to employment:

(1) A client of a sheltered workshop;

(2) A handicapped individual;

(3) A person residing in an institution or facility providing 24 hour support such as a prison, hospital, or community care facility; or

(4) A regular out-patient of a mental hospital, rehabilitation facility or similar institution.

Employing Agency—means any public or private nonprofit employer which employs PSE or work experience participants and which establishes and maintains the personnel standards applicable to those participants covering such areas as wage rates, fringe benefits, job titles and employment status.

Entry Level—means the lowest position in any promotional line, as defined locally by collective bargaining agreements, past practice, or applicable personnel rules (sec. 3(9)).

Family—(a) means one or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent shall be considered to be related by marriage.

(b)(1) For purposes of paragraph (a) of this section, one or more persons not living in the single residence but who were claimed as a dependent on another person's Federal Income Tax return for the previous year shall be presumed, unless otherwise demonstrated, part of the other person's family.

(2) An older worker, as defined in this section, whether living in the residence or not, or a handicapped individual who is 16 years of age or older may be considered a family of one when applying for programs under the Act.

(3) An individual 18 or older, except as provided in (b)(2) of this section, who receives less than 50 percent of support from the family, and who is not the principal earner nor the spouse of the principal earner shall not be considered a member of the family. Such an individual shall be considered a family of one.

Family Income—means all income actually received from all sources by all members of the family during the income determination period. Family size shall be the maximum number of family members during the income determination period.

(a) Family income shall include:

(1) Gross wages and salary (before deductions);

(2) Net self-employment income (gross receipts minus operating expenes);

(3) Other money income received from sources such as net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, child support and periodic income from insurance policy annuities, and other sources of income.

(b) Family income shall exclude:

(1) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(2) Imputed value of owner-occupied property, i.e., rental value;

(3) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any individual;

(4) Public assistance payments;

(5) Any services, compensation, or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty;

(6) Cash payments received pursuant to a State plan approved under Titles I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(7) Federal, State, tribal or local unemployment benefits;

(8) Per capita payments;

(9) Payments made to participants in employment and training programs, including payments received under Titles IV and VIII of the Act and under Title V of the Older Americans Act, except for wages paid for PSE and OJT;

(10) Any property distributed or income derived therefrom, or any amounts paid to or for any individual member, or distributed to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim;

(11) Capital gains and losses;

(12) One-time, unearned income, such as but not limited to:

(i) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefit plans;

(ii) One-time or fixed-term scholarship and fellowship grants;

(iii) Accident, health, and casualty insurance proceeds;

(iv) Disability and death payments including fixed term (but not life-time) life insurance annuities and death benefits;

(v) One-time awards and gifts;

(vi) Inheritances, including fixed term annuities;

(vii) Fixed term workers' compensation awards;

(viii) Terminal leave pay;

(ix) Soil bank payments;

(x) Agriculture crop stabilization payments;

(13) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces;

(14) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35 and 36 of Title 38, United States Code; and

(15) Payments received under the Trade Readjustment Act.

Federal Reservation—means lands, as identified by the Bureau of Indian Affairs, which have been set aside for use and occupation of a tribe or tribes of Indians including land for which the United States is trustee and non-trust land under tribal jurisdiction.

Financial Assistance—means any grant, loan, or any other arrangement by which the Department or Native American grantee provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal or Native American grantee personnel; or

(c) Real and personal property or any interest in or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal or Native American grantee share of its fair market value is not returned to the Federal Government or Native American grantee.

Governing Body—means a body consisting of duly elected or designated representatives, a body appointed by duly elected representatives, a body appointed by a duly elected official, or a body selected in accordance with traditional tribal means which has the authority to provide services to, and to enter into contracts, agreements and grants under this part on behalf of the organization or individuals who elected or designated them, elected the appointing official, or recognize the body selected in accordance with traditional tribal means.

Governor—means the chief executive, or his or her designee, of any State.

Handicapped Individual—means any person who has a physical or mental disability which constitutes a substantial barrier to employment and can benefit from CETA services provided, as determined by the Native American grantee (sec. 3(11)).

Hawaiian Native—means any individual, any of whose ancestors were natives, prior to 1778, of the area which now consists of the Hawaiian Islands (sec. 3(12)).

In-School—means the status of being enrolled full-time and attending an elementary, secondary, trade, technical or vocational school, a college including a junior community college, or a university. An individual shall maintain the status of "in-school" between semesters or quarters or during the summer months provided that individual is scheduled to attend full-time the next regularly scheduled quarter of any of these schools.

In-School Youth—means a person age 14 to 21 who:

(a) Is currently enrolled full-time in, and attending, a secondary, trade, technical, vocational school or junior or community college or is scheduled to attend full-time the next regularly scheduled quarter of any of these schools; or

(b) Has not completed high school and is scheduled to attend or is attending, on a full-time basis, a program leading to a secondary school diploma or its equivalent. Full-time may be defined by the requirements of the agency administering the program.

Job restructuring—means: (a) The procedure which includes: (1) Identifying the separate tasks that comprise a job or group of jobs;

(2) Developing new position descriptions which retain some of the tasks of the original job; and

(3) Developing a career ladder which builds upward from the new positions containing the lesser skilled tasks to regular jobs.

(b) A restructured job shall be clearly different from the original one in terms of skills, knowledge, abilities, and experience needed to perform the work (sec. 432(a)(3)(L)).

Local Educational Agency (LEA)—means (a) Except for purposes of Youth Employment and Training Programs (YETP), a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. It shall further mean the governing bodies of any Bureau of Indian Affairs, tribal or reservation run agencies or school districts, or any non-profit agency or tribally chartered entity providing educational services to Indian and Native American persons as determined by the Native American grantee.

(b) For purposes of YETP, a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a combination of such school districts or counties which are recognized in a State as an administrative agency for their public elementary or secondary schools. It shall further mean any Bureau of Indian Affairs, tribal or reservation run agency or school district or any other nonprofit agency or tribally chartered entity providing educational services to Indian and Native American persons as determined by the Native American grantee.

Low Income Housing—means: (a) For weatherization or winterization projects, those dwellings occupied by persons whose family income does not exceed 125 percent of the poverty level and which are:

(1) Owned by the occupant;

(2) Publicly owned;

(3) Owned by a private nonprofit organization;

(4) Cooperatively owned; or

(5) For projects funded and approved by the Federal Energy Administration, privately owned rental housing.

(b) For rehabilitation as part of community revitalization or stabilization, those dwellings occupied by persons whose family income does not exceed 80 percent of the median income for the area, in accordance with Section 8(f)(1) of the United States Housing Act of 1937, (42 U.S.C. 1437f) and which are:

(1) Owned by the occupant;

(2) Publicly owned;

(3) Owned by a private nonprofit organization; or

(4) Cooperatively owned.

Low Income Level—means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

Lower Living Standard Income Level—means that income level (adjusted for selected Standard Metropolitan Statistical Areas and regional, metropolitan, and nonmetropolitan differences and family size) determined annually by the Secretary based upon the most recent "lower living family budget" issued by the Bureau of Labor Statistics (sec. 3(17)).

Offender—means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom employment and training services may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction (sec. 3(18)).

Older Worker—means a person who is 55 years of age or older.

Participant—means an individual who is:

(a) Declared eligible upon intake; and

(b) Receiving employment, training or services (except post-termination services) funded under the Act following intake, except for an individual who receives only outreach or intake services.

Placement—means the act of securing unsubsidized employment for or by a participant.

Poverty Level—means that annual income level at or below which families are considered to live in poverty, as annually determined by Office of Management and Budget.

Program of Demonstrated Effectiveness—means a program which has demonstrated the capacity to achieve planned goals at reasonable costs within acceptable timeframes, and is either: (1) A program which has demonstrated to the Native American grantee that it has performed effectively within the grantee's jurisdiction, or (2) a program which can demonstrate to the Native American grantee that it has carried out a similar program under similar circumstances in other jurisdictions and can carry out such program effectively within the Native American grantee's jurisdiction.

Project—means: (a) For the purpose of public service employment in Subparts I and J, a definable task or group of related tasks which will be completed within eighteen months or any extension permitted by regulation, has a public service objective, will result in a specific product or accomplishment, and would otherwise not be done with existing funds;

(b) For the purposes of Youth Community Conservation and Improvement Projects in Subpart K, an activity which provides constructive work, conducted by youth, under the guidance of skilled supervisors, which (1) results in tangible outputs or a specific project; (2) benefits the

participants in terms of work habits, skills, and attainment of academic credit where applicable; and (3) will be completed within a definable period of time not to exceed 12 months (sec. 421).

Project Applicants—means States and agencies thereof, units of general local government and agencies thereof, combinations or associations of such governmental units when the primary purposes of such combinations or associations is to assist such governmental units to provide public services, special purpose political subdivisions having the power to levy taxes and spend funds or serving such special purpose subdivisions within an area served by one or more units of general local government, local educational agencies, institutions of higher education, community based organizations, nonprofit groups and organizations serving Native Americans, and other private nonprofit organizations or institutions engaged in a public service.

Promotional Line—means any structure, as defined locally by collective bargaining agreements, past practice, or applicable personnel rules, which provides for the advancement or upgrading of current employees in job positions or job classifications. Promotional lines may be defined without regard to educational, skill levels or chains of command and shall be defined after giving due consideration to actual opportunity for upgrading, lack of supervisory capacity and the policies of Indian self-determination and economic self-sufficiency. A CETA job position may be regarded as the lowest position in any promotional line if all job positions having rights or preference for advancement or upgrading to such positions are also CETA job positions (sec. 3(9) and 302 (b)(3)).

Public Assistance—means Federal, State, tribal or local government cash payments for which eligibility is determined by a need or income test.

Public Service Employment—means the type of work normally provided by government and includes, but is not limited to, work (including part-time work) in such fields as environmental quality, child care, health care, education, crime prevention and control, prisoner rehabilitation, transportation, recreation, maintenance of parks, streets and other public facilities, solid waste removal, pollution control, housing and neighborhood improvement, rural development, conservation, beautification, veterans outreach, development of alternative energy technologies, and other fields of human betterment and community improvement. It includes work performed by tribally sponsored or owned income generating enterprises, owned by Indian tribes, bands, or groups or Native Alaskan entities, provided the profits from such enterprises are used exclusively for functions normally performed by the governing body of such entities.

Secretary—means the Secretary of Labor or the Secretary's designee.

Similarly Employed—means the status of a person who is working for the same employer as the CETA participant, is doing the same type of work, and is similarly classified with respect to employment status (e.g., full-time, permanent, or temporary).

Special Disabled Veteran—means a person who served in the Armed Forces and was discharged or released, with other than a dishonorable discharge, and who had been given a disability rating of 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

State—means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State Employment Security Agency (SESA)—means the State agency which exercises control over the Unemployment Insurance Service and the Employment Service.

State Reservation—means an Indian reservation recognized as such by the State in which it is located.

Supportive Services—means services which are designed to contribute to the employability of participants, enhance their employment opportunities, assist them in retaining employment, and facilitate their movement into permanent employment not subsidized under the Act, including, but not limited to, health care, medical and dental services, legal services, transportation, assistance in securing bonding, residential support, job orientation, counseling, child care, and financial counseling, and assistance (sec. 3(26)).

Underemployed Persons—means: (a) Persons who are working part-time but seeking full-time work; or

(b) Persons who are working full-time but whose current annualized wage rate (for a family of one), or whose family's current annualized income, is not in excess of:

(1) The poverty level, or

(2) 70 percent of the lower living standard income level (sec. 3(27)).

Unemployed Person—means for purposes of determining eligibility: (a) A person who is without a job for at least seven consecutive days prior to application for participation. A person shall be considered as being without a job if, for seven consecutive days, such person:

(1) Worked no more than 10 hours; and

(2) Earned no more than $30; and

(3) Was seeking and available for work; or

(b) A person who is: (1) A client of a sheltered workshop; or

(2) Institutionalized in a hospital, prison or similar institution; or

(c) A person who is 18 years of age or older and whose family receives public assistance, or whose family would be eligible to receive public assistance but for the fact that both parents are in the home; or

(d) A person who is a veteran who has not obtained permanent unsubsidized employment since being released from active duty. Such person shall be considered to meet "unemployed" eligibility requirements regardless of the specific term of unemployment required.

Veteran—means a person who: (a) Served on active duty for more than 180 days, and was released with other than a dishonorable discharge; or

(b) Was discharged or released from active duty for a service connected disability.

Veterans Outreach—means: (a) The recruitment, counseling and registration of eligible veterans for participation in appropriate employment or training programs provided under the Act;

(b) Coordination with the outreach services program carried out under Subchapter IV of Chapter 3 of Title 38, United States Code (pertaining to the dissemination of information about Veterans Administration benefits and services and the provision of such services to eligible veterans), with full utilization of veterans receiving educational assistance or vocational rehabilitation under Chapter 31 or 34 of Title 38, United States Code.

Vietnam-era Veteran—means a veteran under 35 years of age who served under active duty between August 5, 1964, and May 7, 1975, and who was discharged or released with other than a dishonorable discharge.

Subpart B—Designation Procedures for Native American Grantees

§ 688.10 Eligibility requirements for designation as a Native American Grantee.

(a) All funds specifically identified in the Act as reserved for the benefit of Indian and Native American participants (those in Sec. 302 of Title III, Part D of Title II, Title VI, Parts A

and C of Title IV and Title VII) shall be allocated by DINAP only to Native American grantees designated pursuant to this subpart.

(b) To be designated as a Native American grantee, an applicant must have:

(1) A governing body;

(2) An Indian or Native American population within its designated service area of at least 1,000 persons;

(3) The capability to administer an Indian and Native American employment and training program. For purposes of this paragraph, "capability to administer" means that the applicant can demonstrate that it possesses, or can acquire the managerial, technical, or administrative staff with the ability to properly administer government funds, develop employment and training positions, evaluate program performance and comply with the provisions of the Act and the regulations. In judging the applicant's request for designation, consideration shall be given to factors such as:

(i) Previous experience in operating an effective employment and training program serving Indians or Native Americans;

(ii) The number and kind of activities of similar magnitude and complexity that the applicant has successfully completed; and

(iii) The identification of staff currently or potentially in the employ of the applicant who have the qualifications to carry out the managerial, technical or administrative tasks involved in carrying out activities funded under the Act.

(c) *Types of eligible Native American grantees*—(1) *Indian tribe, band or group.* DINAP shall designate as a Native American grantee an Indian tribe, band or group which meets the requirements in paragraph (b) of this section. In the case of a reservation with more than one tribe, each tribe which is independently eligible in accordance with the requirements of paragraph (b) of this section shall be entitled to separate designation.

(2) *Alaskan Native entity.* DINAP shall designate as a Native American grantee an Alaskan native entity which meets the requirements in paragraph (b) of this section.

(3) *Hawaiian Native grantee.* DINAP may designate as a Native American grantee any private nonprofit organization or public agency which meets the requirements in paragraph (b) of this section and which DINAP determines will best meet the needs of native Hawaiians.

(4) *Public or private agencies.* DINAP may designate as a Native American grantee a private nonprofit organization or public agency which meets the requirements in paragraph (b) of this section to serve areas where there are significant numbers of Indians or Native Americans, but where there are no Indian tribes, bands or groups, Alaskan native entities or Hawaiian sponsors or consortia of such sponsors eligible for designation. Where it is not feasible to designate a public agency or private nonprofit organization, DINAP may designate a private for-profit organization.

(5) *Consortium grantees.* DINAP may designate as a Native American grantee a consortium of any the types of grantees described in paragraphs (c), (1), (2), (3), and (4) of this section which may or may not be independently eligible. All such consortia shall meet the following requirements, in addition to the requirements in paragraph (b) of this section:

(i) All the members shall be in geographic proximity to one another. A consortuim may operate in more than one State.

(ii) An administrative unit shall be designated for operating the program, which may be a member of the consortium or an agency formed by the members.

(iii) The consortium shall be the Native American grantee. The consortium's administrative unit shall be delegated all powers necessary to administer the program effectively, including the power to enter into contracts and subgrants and other necessary agreements, to receive and expend funds, to employ personnel, to organize and train staff, to develop procedures for program planning, to monitor program performance, and to modify the grant agreement through agreement with DINAP. The rights of evaluating the program and reallocating funds shall be reserved to the consortium's members.

(d) In the situation where DINAP does not designate Indian tribes, bands or groups or Alaska native villages or groups to serve such groups, DINAP shall, to the maximum extent feasible, enter into arrangements for the provision of services to such groups with other types of Native American grantees which meet with the approval of the Indian tribes, bands, groups or Alaska native villages or groups to be served (sec. 302(d)). In such cases, DINAP shall consult with the governing body of such Indian tribes, bands, groups or Alaska native villages or groups prior to the designation of a Native American grantee.

(e) In designating Native American grantees to serve groups other than those in paragraph (d) of this section, such as non-reservation Indians and Native Hawaiians, DINAP shall, whenever feasible, designate grantees which are directly controlled by Indian or Native American people. Where it is not feasible to designate such types of grantees, DINAP shall consult with Indian or Native American-controlled organizations in the area with respect to the designation of a Native American grantee. DINAP shall require any such grantees not directly controlled by Indian or Native American people to establish a Native American Employment and Training Planning Council and to implement an Indian preference policy with respect to hiring of staff and contracting for services with regard to all funds provided pursuant to this Part (sec. 7(b) of the Indian Self-Determination and Education Assistance Act).

§ 688.11 Designation of Native American grantees.

(a) DINAP shall notify potential Native American grantees of the prospective availability of funds for the next fiscal year by notice not later than February 1 of each year, in the Federal Register. The Notice shall describe the steps in the process of designating Native American grantees and the types of programs for which funds are expected to be available.

(b) An applicant for designation as a Native American grantee shall submit a notice of intent to apply for funds. Such notices of intent shall be postmarked by March 1 and be submitted to the Division of Indian and Native American Programs (DINAP), Office of National Programs, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213. Notices of intent may also be delivered to that office in person or not later than the close of business on March 1. Such notices of intent to apply shall be submitted on Standard Form 424 as a preapplication for federal assistance. The following information shall be included in the notice of intent:

(1) Evidence that the applicant meets the requirements for a Native American grantee contained in § 688.10;

(2) A description of the geographic area or areas which the applicant proposes to serve, together with the Indian and Native American population in such areas, to the extent known. The description must include a list of States (if more than one), in alphabetical order, and under each State, a list of counties in alphabetical order, followed by a list of reservations (if any) in alphabetical order. If the applicant was a Native American grantee for the fiscal year

prior to the one which is being applied for, the applicant must also list any counties and reservations which are being added to, or deleted from, the previous fiscal year's service area;

(3) A description of the applicant's organization, including the legal status of the applicant, the process of selection of the governing body and the duties and responsibilities of the governing body;

(4) Evidence of the applicant's capability to operate an Indian or Native American employment and training program, including a statement of the applicant's past successes in operating programs for Indians or other Native Americans and a statement of the applicant's experience in managing the types of programs and activities allowable under the Act;

(5) A description of the planning process which the applicant proposes to undertake in developing a plan for the use of funds;

(6) If the applicant is applying as a consortium, evidence that the consortium meets the requirements for a consortium in this part, including, but not limited to:

(i) Identification of the member units of the consortium;

(ii) Geographic area or areas to be served by the consortium; and

(iii) Population to be served.

(c) DINAP shall designate Native American grantees for the coming fiscal year. Each applicant shall be notified in writing of the determination not later than June 1. Those applicants that are not designated as Native American grantees may appeal under the complaint procedures in Subpart G. The Department shall decide such appeals, if possible, not later than August 1.

(d) DINAP shall provide each entity designated as a Native American grantee with information necessary to permit it to undertake an orderly planning process and submit its grant application on time. Unless DINAP establishes a different date, the complete annual grant application package shall be submitted not later than August 1. DINAP shall mail to each Native American grantee, which does not already have them, a complete and final set of all applicable regulations and necessary application materials by not later than June 1. DINAP shall also provide designated Native American grantees with a preliminary planning estimate based on the amounts available in the budget of the President or in the most recent concurrent budget resolutions under the Congressional Budget Act applicable to such forthcoming fiscal year. If for any reason DINAP cannot provide a complete and final set of all applicable regulations and necessary application materials by June 1, DINAP shall extend the date for submittal of such plan to allow the designated Native American grantee to review such regulations and to complete such materials. During the period of time between June 1 and August 1, DINAP shall not issue any regulations or guidelines or interpretations thereof that require any change in the designated Native American grantee's plan, which is a condition for DINAP's approval or disapproval of the plan, unless DINAP allows at least one fiscal quarter for the designated Native American grantee to submit such change.

(e) A consortium designated as a Native American grantee, shall, by a date set by DINAP which is no earlier than thirty (30) days from the date of such designation, submit to DINAP a formal consortium agreement which includes:

(1) A statement that the consortium shall have a period of duration at least equal to that of the grant.

(2) An identification of the consortium members.

(3) The geographic area or areas which will be served. The areas must include a list of States in alphabetical order, and under each State, first the counties and then the reservations, both in alphabetical order.

(4) A description of the population to be served.

(5) A statement from each member assuring that each signatory has the necessary legal authority to enter into a consortium agreement.

(6) A statement that the consortium agreement will be signed by the chief elected official or chief executive officer of each consortium member, or by the chief elected official or chief executive officer of one or more consortium members, or by the chief executive officer of the consortium's administrative unit.

(7) A certificate that, subject to applicable Federal, State, tribal or local law, each consortium member jointly and separately accepts responsibility for the operation of the program with regard to actions taken with such members' prior knowledge and consent.

(8) A description of the powers, functions and responsibilities reserved by the consortium members, the process by which decisions will be made, the process by which each member will review and approve the comprehensive employment and training plan; and

(9) A statement identifying the administrative unit which will operate the program and delineating its organizational structure, powers, functions, and responsibilities of those individuals who will be acting for and on behalf of the tribes, bands or groups and how such individuals were selected.

(f) A consortium which submitted a consortium agreement in the preceding year may, in lieu of executing a new consortium agreement, attest in writing, signed by the chief elected official or chief executive officer of each consortium member, that the proposed agreement is the same or noting the complete text of any changes.

(g) DINAP shall review all consortium agreements and any supporting documentation, and shall approve the consortium agreement if it complies with the Act and the regulations. If the consortium agreement is not approved, DINAP shall provide the designated Native American grantee with suggestions or corrective steps to remedy any defect and provide at least thirty (30) days to remedy such defect(s).

(h) If the consortium fails to correct such defect(s) within such time, DINAP shall revoke the designation of the consortium as a Native American grantee by sending a notice of revocation by certified mail, return receipt requested, accompanied by a statement that the Native American grantee may file a Petition for Reconsideration with respect to such a revocation pursuant to § 688.147(a).

§ 688.12 Alternative arrangements for the provision of services.

(a) If no application for Native American grantee designation for an area is filed, or if DINAP has denied such application for that area, DINAP may immediately designate an entity to serve that area, pending the final resolution of any Petitions for Reconsideration or other actions taken pursuant to § 688.147.

(b) If DINAP disapproves a CETP pursuant to § 688.23, it may withdraw the Native American grantee's designation and immediately designate another entity to serve the area, pending the final resolution of any Petitions for Reconsideration or other actions taken pursuant to § 688.147.

(c) If a Native American grantee's CETP is terminated or suspended in whole or in part, DINAP (after an opportunity for a hearing except in emergency situations as described in sec. 106(e) of the Act) may designate another entity to serve the area.

(d) If it is not feasible for DINAP to designate another entity to serve the area under the conditions described in paragraphs (a), (b), and (c) of this section, the funds involved may be redistributed to Native American grantees serving other areas.

Subpart C—Program Planning, Application and Modification Procedures

§ 688.17 Planning process.

(a) Each Native American grantee shall establish a planning process for the development of its comprehensive employment and training plan (CETP). This planning process shall involve consideration of the need for employment and training services, appropriate means of providing needed services and methods of monitoring and assessing the services provided to the extent deemed appropriate. The planning process shall provide the opportunity for involvement of the client community, service providers such as community-based organizations and educational agencies, the private business sector, tribal agencies, and other Indian and Native American organizations whose programs are relevant to employment and training services.

(b) The Native American grantee may establish an employment and training Planning Council. The Native American grantee shall appoint the members of such Planning Council and designate one of the members as the Chairperson. The members may include representatives of the client community, community-based organizations, education and training agencies, the private business sector, organized labor and tribal and other agencies whose mission and services are relevant to the provision of employment and training services. The Planning Council may make recommendations on program plans, goals, policies and procedures and the need for and effectiveness of services provided. Where such a Planning Council is appointed, the costs of its meetings, including meeting rooms, travel and per diem may be paid with grant funds. The comments and recommendations of the Planning Council should be given careful consideration in the development of program plans. However, such comments and recommendations are to be advisory only and do not relieve the Native American grantee of the responsibility for the effective planning and administration of its employment and training program. The work of the Planning Council shall be closely coordinated, where applicable, with the work of any special councils created to provide advice on the conduct of youth programs under Title IV of the Act or private sector intitiative programs under Title VII of the Act.

§ 688.18 Regional and national planning meetings.

(a) Native American grantees shall hold at least one meeting per year for all such grantees in each Federal region.

(b) Such regional planning meetings may include, but are not limited to, the following purposes:

(1) Improving the coordination of services provided by the various Native American grantees within the region;

(2) Developing procedures by which Native American grantees can assist each other in the effective conduct and administration of their respective employment and training programs; and

(3) Considering and, where appropriate, developing common positions on issues of general concern to Indian and Native American employment and training programs.

(c) There shall be at least one national meeting per year to consider issues of interest to Native American grantees that affect such entities across regional lines.

(d) Grant funds may be used for holding regional and national meetings, subject to the restrictions on allowable costs.

§ 688.19 Grant application content.

(a) A grant application (CETP) must contain all the documentation needed to apply for all the funds (i.e., under all titles of the Act) for which the Native American grantee wishes to apply, except for the SYEP program (Summer Youth Employment Program) and for the Title VII Indian and Native American Private Sector Initiative Program. Instructions for applying for SYEP funds will be sent to all eligible Native American grantees when DINAP is informed of the amount of SYEP funds available. SYEP funds will be added to the original CETP by means of a modification.

(b) Four copies of the CETP must be submitted to the designated DINAP project officer. The composition of the Title III, Sec. 302 part of the CETP shall be as follows. (The additional documentation for Native American grantees receiving funds under other titles of the Act is described in the regulations for those titles. The additional documents must be included in each copy of the package.)

(1) Grant Signature Sheet;

(2) Application for Federal Assistance;

(3) Narrative Description for Title III program.

(4) CETA Program Planning Summary;

(5) Budget Information Summary;

(6) Budget Information Summary (for administration);

(7) Budget Information Summary Backup for the Administrative Cost Pool;

(8) PSE Occupational Summary (only if there is a PSE program using Sec. 302 funds);

(9) Summary of Subrecipients and Contractors; and

(10) CETA Monthly Schedule (only if there is a PSE program using Sec. 302 funds).

(c) In addition to the four application packages described above, the following documents must also be submitted in the same envelope:

(1) Three copies of the Request for Advance or Reimbursement (only for Native American grantees whose total grant is for less than $120,000);

(2) Two completed and signed Authorization Signature Cards for Payment Vouchers on Letter of Credit (only for Native American grantees whose total grant is for at least $120,000);

(3) Five copies of the Agreement for Special Bank Account; and

(4) One copy of a surety bond.

(d) All of the signatures called for on the above documents must be original signatures.

(e) Also include copies of the following (no original signature needed):

(1) Two Grant Signature Sheets; and

(2) One Grant Signature Sheet, one Application for Federal Assistance, and one copy of that section of the application requesting approval to buy or rent property.

(f) The Narrative Description of the Title III program should be completed as briefly and clearly as possible. If an item is described in the Title III Narrative Description, it should not be repeated in the narrative of any other program component. The Title III Narrative Description shall include:

(1) The geographic area and population to be served;

(2) The main employment and training related problems and planned solutions;

(3) Each major program component, such as training, OJT, PSE, services, etc., and the results expected;

(4) The system for planning the overall program;

(5) Methods of recruiting, selecting and determining and verifying eligibility of participants;

(6) Administrative system and organizational structure of CETA program staff;

(7) Coordination with other employment and training service deliverers;

(8) Planned administrative expeditures;

(9) Grievance procedures;

(10) The plans to monitor the operations to insure effectiveness and to prevent fraud and abuse;

(11) The bonding arrangements;

(12) The information concerning the OJT program if applicable, as required in § 688.81(b)(4) and § 688.81(b)(6)(iii)(A);

(13) The allowance payment system described in § 688.82-2;

(14) The retirement system requirements in § 688.84-1(d); and

(15) All purchases and leasing of property needed for the duration of the grant, as set forth in the Property Handbook for Employment and Training Administration Project Grantees, Handbook No. 303.

(16) The following statement: "The Native American grantee agrees to accept a unilateral modification by the Director, DINAP, whenever there has been a change in any Federal statute, regulation, Executive Order, or other Federal law, which, as determined by the Director, DINAP, is relevant to the financial assistance provided under the grant."

§ 688.20 Submission of grant applications.

Completed grant applications must be submitted to the designated DINAP Federal Representative by August 1 of each year.

§ 688.21 Comment and publication procedures.

(a) In order to achieve maximum coordination of services provided by Native American grantees and other types of entities directly funded by the Secretary, each Native American grantee shall provide an opportunity for comment on its CETP. The Native American Grantee shall be under no obligation to make any changes in its CETP as a result of any such comments (sec. 123(b)).

(b) An opportunity to comment shall be provided to officials of each Indian tribe, band or group or each native Alaskan village or group to be served.

(c) Comments shall be requested by the Native American grantee by not less than 30 days after the date the CETP is submitted to DINAP. All written comments and responses thereto shall be transmitted to DINAP either with the CETP or not less than 45 days after submission of the CETP.

§ 688.22 Application approval.

(a) Within 60 days of receipt, whenever possible, a CETP shall be approved if it meets the requirements of the Act and the regulations, and if it provides for an effective and efficient program.

(b) If the CETP is approved, DINAP shall provide the Native American grantee with a grant agreement, consisting of the Grant Signature Sheet, the rest of the approved CETP and such other material necessary for the initiation of the approved programs. Funds shall then be made available as soon as possible.

(c) The Grant Signature Sheet shall specify the amount obligated by DINAP to the Native American grantee and the duration of the grant and shall be signed by the Director, DINAP, and a duly designated official of the Native American grantee.

§ 688.23 Application disapproval.

(a) A CETP shall be disapproved if it fails to meet the requirements of the Act or the regulations or if it does not provide for an effective and efficient program.

(b) No CETP shall be disapproved until the designated Native American grantee is provided with suggestions on corrective steps to remedy any defect in the CETP and has been provided with at least 30 days to remedy such defect(s), but has failed to do so.

(c) When a CETP is disapproved (or conditionally approved), a notice of disapproval (or conditional approval) shall be transmitted by certified mail, return receipt requested, to the designated Native American grantee, accompanied by a statement of the grounds of the disapproval (or conditioned approval) and a statement that the designated Native American grantee may file a Petition for Reconsideration with respect to the disapproval (or conditional approval) pursuant to § 688.147.

§ 688.24 Modification of a CETP.

(a) A formal modification of a CETP is required when:

(1) There is a change of at least 25 percent or $25,000 (whichever is greater) in any cost category;

(2) There is a change of at least 25 percent or 25 individuals (whichever is greater) in the number of individuals to be served in any category of program activity; or

(3) There is a substantial change in program design or in other significant information in the CETP.

(b) The documentation to be submitted to the DINAP Federal Representative requesting such a modification shall consist of a letter explaining the need for the change and four copies of the proposed modification plus three copies of the Grant Signature Sheet. Each copy of the modification will consist of a Grant Signature Sheet, a narrative (containing only the change from the original narrative) and other documents that will have dollar or participant levels that differ from the documents in the original CETP or a previous modification.

(c) DINAP shall notify the Native American grantee of tentative approval or disapproval within 10 calendar days of receipt of the proposed modification. DINAP shall notify the Native American grantee in writing of final approval or disapproval within 30 calendar days of the receipt of the proposed modification. Failure to provide such final notification within such time frame will constitute approval, except when the modification results in a violation of the Act or regulations.

(d) A Native American grantee may make any change in its Progam Planning Summary and Budget Information Summary except as provided in paragraph (a) of this section, without prior approval but must show any such change in the first Quarterly Progress Report submitted to DINAP after the change has been made. At the same time this report is submitted, an updated Program Planning Summary and Budget Information Summary must also be submitted, which indicate the change.

(e) Native American grantees shall notify DINAP by submitting a modification whenever there is a change in a name, address, or other similar information in the CETP. For this purpose, four copies of the Grant Signature Sheet will suffice, with a page attached explaining the change. DINAP shall modify the CETP as appropriate.

(f)(1) DINAP may execute unilateral modifications to extend the period of operations of a CETP. Such extension shall be followed by a jointly signed modification of the CETP incorporating any changes in the program.

(2) All grants entered into on or after October 1, 1979 shall contain a provision that, as a condition of financial assistance, the Native American grantee agrees to accept a unilateral modification by the Director, DINAP, whenever there has been a change in any Federal statute, regulation, Executive Order, or other Federal law, which, as determined by the Director, DINAP, is relevant to the financial assistance provided under the grant.

§ 688.25 Clearinghouse notification of grant award.

At the time a designated Native American grantee's completed CETP is forwarded to DINAP, the Native American grantee (except for those Native American grantees which are federally recognized tribes or Native Alaskan grantees) shall send a copy of the Grant Signature Sheet to the local

area clearinghouse, as required by OMB Circular A-95. If the funding levels are not known, the previous year's funding levels should be shown on the Grant Signature Sheet, and identified as such, to indicate the approximate level of activity to be expected in the new grant. The addresses of local area clearinghouses are obtainable from Governors' offices.

Subpart D—Administrative Standards and Procedures

§ 688.31 General.

(a) This section describes requirements relating to the administration of grants by Native American grantees. Administrative requirements found in this subpart apply to all programs under the Act unless stated to the contrary for any specific program.

(b) As referenced in this subpart, the requirements set forth in 41 CFR Parts 29–70, "Administrative requirements governing all grants and agreements by which Department of Labor agencies award funds to State and local governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations," shall apply to grants under CETA.

(1) The requirements in 41 CFR 29–70.1 set forth the policies which apply to all basic grants and agreements.

(2) The requirements in 41 CFR 29–70.2 implement OMB Circular Nos. A–102 and A–110, and apply to all CETA grants and agreements.

§ 688.32 Payment.

Payment will be made through advances under either letter-of-credit or Treasury check procedures, or through reimbursement of costs incurred through Treasury check procedures.

§ 688.33 Letter of credit.

Payments will be made by letter of credit in accordance with 41 CFR 29–70.210–2, *Payment methods.*

§ 688.34 Payment by Request for Advance or Reimbursement (SF 270).

Payments will be made by Treasury check through advance or through reimbursements in accordance with 41 CFR 29–70.210–2, *Payment methods.*

§ 688.35 Depositories for CETA funds.

The standards covering the use of banks and other institutions as depositories for CETA funds are found at 41 CFR 29–70.201, *Cash depositories.*

§ 688.36 Financial management systems.

(a) Each Native American grantee, subgrantee and contractor shall maintain a financial management system which will provide accurate, current and complete disclosure of the financial transactions under each grant, subgrant or contract activity, and will enable each Native American grantee, subgrantee or contractor to evaluate the effectiveness of program activities and meet the reporting requirements of this Subpart.

(b) Each Native American grantee, subgrantee and contractor shall maintain its financial accounts so that the reports required by the Department may be prepared therefrom.

(c) To be acceptable for audit under this Subpart, a Report of Federal Cash Transactions and a Financial Status Report shall be:

(1) Current as of the cut-off date of the audit;

(2) Taken directly from or linked by worksheet to the Native American grantee's books of original entry; and

(3) Traceable to source documentation of the unit transaction.

(d) In cases in which the Native American grantee's records are unauditable, the auditor shall submit a letter to the grant officer delineating the reason therefor and delineating the action required to place the records in auditable condition.

§ 688.37 Audits.

(a) *General.* The audit provisions of 41 CFR 29–70.207–2(h), 41 CFR 29–70.207–3 and 41 CFR 29–70.207–4 shall apply to Native American grantee programs.

(b) *Special provisions.* (1) The Secretary shall complete all audits of Native American grantees' funds which the Secretary deems necessary in a timely fashion following the end of the fiscal year for which the audits are made (sec. 133(b)).

(2) In the conduct of audits of Native American grantees, the Secretary shall utilize personnel, including personnel of contractors retained by the Department to conduct such audits, who have particular competence in the field of Indian and Native American employment and training programs (sec. 302(e)).

§ 688.38 Maintenance and retention of records.

(a) All records, reports, documents and files required under the provisions of these regulations shall be the responsibility of the Native American grantee. Retention of and access to those records, etc. shall be as provided for at 41 CFR 29–70.203, *Retention of and custodial requirements for records* (sec. 133(a)(1)).

(b) Financial records relating to public service employment programs and records of the names, addresses, positions and salaries of all persons employed in public service jobs shall be maintained and made available to the public (sec. 122(g)).

§ 688.39 Program income.

(a) *General.* The provisions of 41 CFR 29–70.205, *Program income and interest earned,* shall apply to Native American grantee programs.

(b) *Special provision.* Income earned as a result of activities of CETA participants by an income generating enterprise, which is owned by an Indian tribe, band or group or an Alaskan Native entity, and the profits of which are used exclusively for governmental, charitable, educational, civic, social or other similar purposes, may be retained by such enterprise and used in the same manner as other income of such enterprise.

§ 688.40 Native American grantee contracts and subgrants.

(a) Contracts may be entered into between the Native American grantee and any party, public or private for purposes set forth in the CETP.

(b) Subgrants may be entered into between the Native American grantee and units of State and local general government, Indian government, public agencies or nonprofit organizations.

(c) The Native American grantee is responsible for the development, approval and operation of all contracts and subgrants and shall require that its contractors and subgrantees adhere to the requirements of the Act, the regulations under the Act, and other applicable law. It shall also require contractors and subgrantees to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant.

(d) Each Native American grantee shall take action against its contractors and subgrantees to eliminate violations of the regulations, and to prevent misuse of CETA funds (secs. 123(i) and 106(d)(1)).

(e) Subgrantees are entitled to funding for administrative costs. The amount of such funding will be determined during the development of subgrants.

(f) If a contract or subgrant is cancelled in whole or in part, the Native American grantee shall develop procedures for ensuring continuity of service to participants to the extent feasible.

(g) The Native American grantee may enter into contracts or subgrants which

extend past the expiration date of the grant but such extension shall not exceed one year. In such cases, the grantee shall continue to be responsible for the administration of such contracts and subgrants.

(h) To the extent feasible, Native American Indian grantees shall give preference in the award of contracts and subgrants to Indian organizations and to Indian-owned economic enterprises as defined in sec. 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). Any contract or subgrant made by a Native American grantee shall require that, to the greatest extent feasible, preference and opportunities for training and employment in connection with such contract or subgrant shall be given to qualified Indians regardless of age, religion or sex and that the contractor or subgrantee shall comply with any Indian preference requirements established by the Native American grantee. All grantees, subgrantees and contractors shall include the requirements of this paragraph in all subcontracts and subgrants made by them (sec. 7(b) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638 (25 U.S.C. 450 *et seq.*)).

(i) The Native American grantee shall ensure that contractors and subgrantees maintain and make available for review by the grantee and the Department of Labor all records pertaining to the operations of programs under such contracts and subgrants consistent with the maintenance and retention of record requirements in § 688.38.

§ 688.41 Procurement standards.

(a) Native American grantees shall comply with the procurement systems and procedures found in 41 CFR 29–70.216, *Procurement standards.*

(b) Subject to the Indian preference provisions of § 688.40(h), small and minority-owned businesses, including small businesses owned by women, within the service area of the Native American grantee, shall be provided maximum reasonable opportunity to compete for contracts for supplies and services. One means to provide for this is the use of set-asides (sec. 121(k)).

(c) No funds shall be paid to any nongovernmental organization for the conduct of programs (other than under Title VII or on-the-job training) under the Act unless:

(1) It has submitted an acceptable proposal;

(2) Selection is performed on a merit basis;

(3) It has not been seriously deficient in its conduct of, or participation in, any Department of Labor program in the past, or is not a successor organization to one that was seriously deficient in the past, unless the organization satisfactorily demonstrates that the deficiency will be corrected and performance substantially improved; and

(4) It has the administrative capability to perform effectively (sec. 121(o)).

(d) No funds will be paid to any nongovernmental organization for the conduct of on-the-job training or Title VII programs under the Act unless:

(1) Payment is supported by a written agreement which has been evaluated and found acceptable; and

(2) It has not been seriously deficient in its conduct of, or participation in, any Department of Labor program in the past, or is not a successor organization to one that was seriously deficient in the past, unless the organization satisfactorily demonstrates that the deficiency will be corrected and performance substantially improved.

§ 688.42 Property management standards.

Native American grantees shall comply with the property management standards set forth in 41 CFR 29–70.215.

§ 688.43 Allowable costs under CETA.

(a) *General.* To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program and be allocable thereto under these principles.

(b) *Direct costs.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

(c) *Indirect costs.* Indirect costs are those:

(1) Incurred for a common or joint purpose benefiting more than one cost objective; and

(2) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the Native American grantee, as well as those incurred by other entities in supplying goods, services, and facilities to the Native American grantee.

(d) *Restrictions on use of funds.* (1) The amount of funds available for any specific cost category or activity shall be limited as specified in the regulations for the specific programs elsewhere in this Part. Funds made available for one program may not be used to support costs properly chargeable to another program with the exception that funds available for administration shall be pooled and used to cover all allowable administrative costs incurred under the grant (sec. 123(f)).

(e) *Allowable CETA Costs.* Except as modified by these regulations, the cost principles to be used in determining allowable CETA costs are referenced in 41 CFR 29–70.103, *Cost principles.*

(1) CETA funds may be used to satisfy cost sharing or matching requirements where authorized by Federal Law, other than CETA, when seeking other Federal funds and shall be subject to the provisions of 41 CFR 29–70.206, *Matching share.*

(2) Funds may be used for construction activities only to:

(i) Pay wages and fringe benefits for participants employed by Native American grantees, public agencies, or private non-profit organizations;

(ii) Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants;

(iii) cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and allowances and wages (sec. 123(c)); and

(iv) cover costs of material and supplies, in Titles II–D and VI projects, weatherization activities and Youth Community Conservation and Improvement Projects, which become part of the construction.

(3) Costs associated with building repairs, maintenance, and capital improvements of existing facilities used primarily for programs under the Act are allowable.

(4) The costs of home repair, weatherization and rehabilitation are allowable when:

(i) The work is performed:

(A) On dwellings of individuals whose family income is at or below 125 percent of the poverty level and which are privately owned and owner occupied, privately owned by a Native American grantee or a nonprofit organization, or are units of public housing; or

(B) In weatherization projects funded by the Community Services Administration pursuant to section 222(a)(5) of the Economic Opportunity Act of 1964 (42 U.S.C. 2809) or Department of Energy pursuant to Title IV of the Energy Conservation and Production Act of 1976, (42 U.S.C. 6850) or

(C) In rehabilitation projects of housing for lower income families as defined in section 8(f)(1) of the United States Housing Act of 1937 as part of

community revitalization or stabilization projects (sec. 123(c)(4)); and

(ii) Such activities are supervised by an adequate number of supervisory personnel who are adequately trained in the skills needed to carry out such activities and to instruct participants in the skills needed to perform in the work involved (sec. 123(c)).

(5) Native American grantees shall not use funds under the Act to assist an establishment in relocating from one area to another, or locating new branches, subsidiaries, or affiliates, including by placing participants in such establishment, nor shall they use funds under the Act in training programs in an establishment which has relocated within the past year, when such relocation has resulted in an increase in unemployment in the area of original location or in any other area (sec. 121(e)(4)).

(6) Unemployment compensation costs are allowable for administrative staff hired in accordance with the administrative provisions of this part, and for participants required by § 688.83(c) to be covered for unemployment compensation purposes; except that such costs shall not be allowable for PSE participants to the extent that unemployment compensation paid to them is reimbursable under Part B, of Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93–567, as amended by Sec. VI of Pub. L. 94–444 (26 U.S.C. 3304 note)).

(7) CETA funds may be used to pay the cost of incorporating a private-nonprofit PIC or consortium administrative unit for the purpose of carrying out programs under the Act. These costs shall be charged to the administration.

(f) *Travel costs.* (1) The cost of participants travel and staff travel necessary for the operation or administration of programs under the Act are allowable costs, and chargeable to administration except as described in paragraph (f)(4) of this section.

(2) Travel costs of Native American grantee officials, including staff, board members, and advisory council members are allowable if costs specifically relate to programs under the Act. These costs will be charged to administration. Travel costs may not be paid for officials of tribes or organizations belonging to a consortium unless they are also officials of the Native American grantee organization. Exceptions to this require advance, written approval by DINAP.

(3) Travel costs for administrative staff, including participants in administrative positions, are allowable when the travel is specifically related to the operation of programs under the Act.

(4) Travel costs for participants using their personal vehicles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These costs shall be charged to fringe benefits.

(5) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services.

§ 688.44 CETA cost allocation.

Allowable costs shall be charged against the following cost categories: Administration; wages; training; fringe benefits; allowances; and services.

(a) Costs are allocable to a particular cost category to the extent that benefits are received by such category.

(b) All Native American grantees shall plan, control, and report expenditures against these cost categories.

(c) All Native American grantees are responsible for ensuring that subgrantees and contractors plan, control, and report expenditures against these cost categories.

(d) The following principles shall be followed in classifying costs by cost category:

(1) Participants' wages shall be charged to wages. All wages paid to participants in PSE, work experience, classroom training, employment and training services and supportive services shall be reported as wages. Cost-of-living increases are considered wages.

(2) Participants' fringe benefits shall be charged to fringe benefits. Fringe benefit costs for participants include, but are not limited to: Provisions for annual, sick, court and military leave pursuant to an approved leave system; employees' life and health insurance plans, unemployment insurance, workers' compensation insurance and retirement benefits; and under PSE programs, uniforms, tools, or other equipment ordinarily provided by the employer to its regular employees, provided these are for the benefit and ownership of the participants.

(3) Allowances shall be charged to allowances.

(4) Training costs consisting of goods and services which directly and immediately affect participants in either a work environment or classroom setting, including classroom training in conjunction with a Vocational Exploration Program, shall be charged to training. Training costs include, but are not limited to: Salaries, fringe benefits, equipment and supplies of personnel engaged in providing training; books and other teaching aids; equipment and material used in providing training to participants; classroom space and utility costs; and that part of tuition and entrance fees which represent instructional costs having a direct and immediate impact on participants. The compensation of individuals who both instruct and supervise other instructors shall be prorated among the training and administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees and the costs of supplies used in the course of both participant instruction and other activities should be prorated among the benefiting uses.

(5) Supportive and employment and training services (i.e. costs which consist of goods and services which affect participants) shall be charged to services. Services include, but are not limited to: Salaries and fringe benefits; space, utility, equipment and travel costs which are incurred by personnel engaged in providing services to participants; and that part of single unit charges for child care, health care and other services which represent only the costs of services directly beneficial to participants. Transportation of participants, as provided in § 688.43(f)(5) is properly chargeable to services.

(6) Administrative costs shall consist of all direct and indirect costs associated with the management of the program. These costs shall include the administrative costs, both direct and indirect, of subgrantees and contractors. Administrative costs shall be limited to those necessary to effectively operate the program.

(i) Indirect administrative costs represent the general management and support functions of an organization as well as secondary management and support functions. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions; related materials, supplies, equipment, office space costs, and staff training.

(ii) Direct administrative costs are comprised of goods and services which neither contribute to the general management and support functions of an organization, nor directly and immediately affect participants, (e.g., training costs). Included are salaries and fringe benefits of direct program administrative positions such as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these

program administration positions shall be charged to administration. Some examples of administrative costs are: the salary of a clerical assistant to a supervisor; that part of an instructor's salary representing time spent supervising other instructors; desk-top supplies used by supervisors; and, in general, office administration, rent, depreciation or maintenance of nonclassroom space; staff training; consultant services under contract not involving direct training or services to participants; costs incurred in the establishment and maintenance of a planning or advisory council under CETA, or in publishing a grant application; and costs of monitoring and providing technical assistance to contractors and subgrantees.

(iii) Services normally chargeable to administration shall be charged to wages or fringe benefits, as appropriate, when performed by program participants.

(e) *Allocation of fixed unit charge.* (1) When contractors or subgrantees bill the Native American grantee with a single unit charge containing costs which are chargeable to more than one cost category, the Native American grantee shall charge these costs to the cost categories in § 688.44 *CETA cost allocation.* For unit charges such as tuition fees for which the necessary detail cannot be provided, a reasonable estimate of the breakdown of the single unit charge among cost categories in § 688.44 will be sufficient, including for audit purposes. When such unit charges are normally billed as a single charge and the cumulative amount of such charges does not exceed $25,000 within the grant year, proration will not be required. These costs may be charged to the category receiving the most benefit.

(2) Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories but may be charged entirely to training when the agreement:

(i) Is for classroom training;

(ii) Is a fixed unit price agreement; and

(iii) Stipulates that full payment for the full unit price will be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement.

(3) The provisions of this section shall not apply to vendors selling or leasing equipment and attendant service at a commercially established rate to Native American grantees or subgrantees.

(4) In the case of multiuse equipment there must be a proration of costs or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(5) Any single cost, such as staff salaries or fringe benefits, which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(6) Any profit or loss may be prorated among all affected cost categories.

(f) The manner in which the cost categories are assignable to specific program activities is set forth below:

(1) *Classroom training.* Cost categories are: Training; allowances; services; wages when paid to participants during classroom training; and fringe benefits (medical and accident insurance for participants only).

(2) *On-the-job training.* Cost categories are: Training and services.

(3) *Public service employment.* Cost categories are: Wages; fringe benefits; services; and training.

(4) *Work experience.* Cost categories are: Training; services; wages; and fringe benefits.

(5) *Services to participants (not part of another program activity).* Cost categories are: Allowances; fringe benefits (medical and accident insurance for participants only); and services.

(6) *Other activities.* Cost categories are: Wages; fringe benefits; training; allowances; and services.

§ 688.45 Administrative costs.

(a) All administrative funds for all programs operated under separate Titles, Parts or Sections of the Act by a Native American grantee shall be pooled into one fund. Planned expenditures from this fund shall be described in a separate section of the grantee's annual CETP.

(b) When the administrative section is approved, the funds may be expended for all allowable administrative costs. There is no requirement that administrative costs be allocated back to Title or program activity.

(c) The administrative cost plan may be modified during the program year. The amount of funds in the pool may be decreased and the funds sent back to the program from which they came provided that no program receives back more than it contributed to the administrative cost pool. The administrative pool may also be increased by up to the percent of funds allowed by the regulations for each program.

(d) At the end of a grant period, unexpended administrative funds will be treated in accordance with the provisions of § 688.48 and § 688.49. In the new grant period, the amount of new funds which will go into the administrative cost pool will be determined by using only the new obligational authority in the allocation for the new fiscal year.

(e) The maximum percentages of funds that may be put into the administrative cost pool (unless otherwise waived) are as follows:

(1) Title II D, PSE, 15 percent
(2) Title III, 20 percent
(3) Title IV, YETP, 20 percent
(4) Title IV, YCCIP, 20 percent
(5) Title IV, SYEP, 20 percent
(6) Title VI, 15 percent (except as noted in § 688.205(b))
(7) Title VII, 30 percent.

§ 688.46 Administrative staff and personnel standards.

(a) *Staffing.* Members of the population to be served shall be provided maximum employment opportunities at all levels of the CETA administration. Native American grantees shall establish systems to enhance the recruitment and hiring of qualified Indian and Native Americans and to provide opportunities for their further occupational training and career advancement (sec. 121(b)(1)(B)).

(b) *Compensation.* Compensation for administrative staff shall be at levels consistent with generally accepted business practices. Such administrative wages, salaries, and fringe benefits are allowable administrative costs under CETA. Participants employed as administrative staff, however, are subject to the wage provisions of § 688.92.

(c) *Basic personnel standards.* All employees, including participants, engaged in the administration of programs under the Act shall be subject to the policies and methods of personnel administration as established by the Native American grantee.

(d) *Bonding.* Native American grantees shall comply with the bonding requirements at 41 CFR 29-70.202b, *Bonding and insurance-CETA requirements.*

§ 688.47 Reporting requirements.

(a) Within 30 days of the end of each fiscal year, a Native American grantee shall submit to the DINAP Federal Representative financial and program reports on each program. Four identical sets of the reports are required. Each set shall consist of the CETA Financial Status Report, CETA Program Status Summary, and Quarterly Summary of Participant Characteristics. For grants with a total funding of less than $120,000 a Federal Cash Transaction Report also must be submitted. Detailed

descriptions of these reports are in the *Forms Preparation Handbook.* Within 60 days of the end of each fiscal year, four copies of the Annual CETA Program Activity Summary and the Annual Report of Detailed Characteristics must also be submitted.

(b) Native American grantees may from time-to-time be required to prepare and submit additional reports requested by DOL and other Federal agencies for the performance of the legal responsibilities of these agencies, except that such reports will not be required by DOL more than once each fiscal quarter.

§ 688.48 Grant closeout procedures.

(a) The closeout of a grant is the process by which DOL determines that all applicable administrative actions and all of the required work under the grant have been completed by the Native American grantee.

(b) Upon the completion of the grant period, or at any termination date determined by DINAP, DINAP shall provide timely guidance to the Native American grantee as to the reports, forms and other documentation required for the closeout process. The Native American grantee shall submit the documentation as required.

(c) With respect to Native American grantees other than those described in § 688.49:

(1) DOL shall make prompt payment for the reimbursement of any remaining allowable federal costs incurred under the grant being closed out; and

(2) Such grantees shall refund immediately to DOL any unencumbered balance of cash drawn down from the letter of credit advanced by Treasury checks.

§ 688.49 Carryover of funds from one fiscal year to the next.

With respect to Native American grantees that have achieved satisfactory progress in their programs conducted under the Act during a given grant period and that have been designated as Native American grantees for the following fiscal year, DINAP shall normally permit the continued use of administrative and program funds remaining at the end of the first grant period. DINAP shall advise such grantees of the procedures to be followed with respect to the retention of such funds for program and administration purposes.

§ 688.50 Secretary's responsibilities for assessment and evaluation.

(a) As used in this section, the term "assessment" refers to the federal review of the performance of individual Native American grantees and the term "evaluation" refers to the federal study of overall effectiveness and impact of programs and activities under the Act.

(b) The Secretary shall provide for the continuing evaluation of all programs, activities, and research and demonstration projects including their cost effectiveness in achieving the purposes of the Act, their impact on communities and participants, their implication for related programs, the extent to which they meet the needs of persons by age and sex, and the adequacy of the mechanism for the delivery of services.

(c) The Secretary shall also arrange for obtaining the opinions of participants about the strengths and weakeness of the programs (sec. 313(a)).

(d) All assessments and evaluations shall recognize and support the federal commitment to support growth and economic and social development as determined by representatives of the communities and groups served by this Part (sec. 302(b)(3)).

§ 688.51 Reallocation of funds.

(a) DINAP may make such reallocation, as it deems appropriate, of any amount of any allocation under the Act to the extent that it determines that a Native American grantee will not be able to use such amount within a reasonable period of time.

(b) When DINAP determines that reallocation is appropriate, it shall give the Native American grantee 30-day notice of proposed action to remove funds from the grant. Such notice shall include specific reasons for the action being taken, and shall give the Native American grantee and the affected Indian or Native American community the opportunity to submit comments on the proposed reallocation of funds. These comments shall be submitted to DINAP within 30 days from the date of the notice. DINAP shall notify affected Native American grantees on any decision to reallocate funds and shall have any such decision published in the Federal Register.

(c) In reallocation of funds, consideration shall be given first to Native American grantees within the same State and then to Native American grantees within other States, taking into consideration the number of eligible unemployed individuals in those areas.

Subpart E—Program Design and Management

§ 688.75 General responsibilities of Native American grantees.

This Subpart sets out program operation requirements for Native American grantees including program management, linkages, coordination and consultation, allowable activities, participant benefits and duration of participation provisions. It also sets forth the responsibilities of Native American grantees with respect to nondiscrimination and the equitable provision of services.

§ 688.76 General responsibilities of DINAP.

DINAP shall be responsible for:

(a) Prompt notification of all Native American grantees of allocations of funds, proposed and final rules, guidelines and program directives;

(b) Advising all Native American grantees as to their rights and responsibilities under the Act;

(c) Designing performance standards and assessment and evaluation criteria which, to the maximum extent feasible, recognize the federal commitment to support growth and development as determined by representatives of the communities and groups served under this part (sec. 302(b)(3));

(d) Providing technical assistance to Native American grantees to assist them in complying with the requirements imposed by the Act and the regulations in the effective implementation of their comprehensive employment and training plans (sec. 123(m));

(e) Employing personnel having particular competence in the administration of Native American employment and training programs (sec. 302(e)); and

(f) Consulting with appropriate Native American grantees prior to the commitment of discretionary and technical assistance funds.

§ 688.77 Program management systems.

(a) All Native American grantees shall establish management systems to assess all programs. Grantees shall take necessary corrective action to improve underperformance and to plan for more effective subsequent operations. Native American grantees must institute and maintain effective systems for the overall management of all programs including:

(1) Eligibility verification systems as described in § 688.78;

(2) Complaint and hearing procedures as described in Subpart G of this Part; and

(3) Mechanisms for taking immediate corrective action where problems have been identified and for restitution of CETA funds for improper expenditures.

(b) All Native American grantees shall establish and maintain financial management and participant tracking systems in accordance with §§ 688.36 and 688.78. The principal objectives of

such systems shall be to provide the Native American grantee with systems necessary to effectively manage its program and to provide information necessary to design program activities and delivery mechanisms.

(c) Each Native American grantee shall establish and use procedures for the continuous, systematic assessment of program performance in relation to the goals contained in its grant.

(d) Native American grantees shall establish and use procedures whereby the information collected and assessments conducted shall be considered in subsequent program planning and in the selection of service deliverers.

§ 688.78 Participant eligibility determination.

(a) Each Native American grantee, and any subgrantees or contractors delegated responsibility for the determination of participant eligibility, shall be responsible for developing and maintaining a system which reasonably ensures an accurate determination and subsequent verification of eligibility based on the information presented at the time of application.

(b) The ultimate responsibility for the selection of participants and the maintenance of participant records rests with the Native American grantee. However, the Native American grantee may delegate the administration of this responsibility to subgrantees or contractors. The selected agency must provide adequate documentation of each participant's eligibility and retain in the participant's folder the information on which this determination is based (sec. 123(i)).

(c) The eligibility determination shall be based upon a signed, completed application form which records all information necessary to determine eligibility, which attests that the information on the application is true to the best of the applicant's knowledge and acknowledging that such information is subject to verification and that falsification of the application shall be grounds for the participant's termination and may subject the applicant to prosecution under law. In the case of an applicant who is a minor (except minors who are emancipated or heads of households), the signature of the parent, responsible adult or guardian is also required.

(d) Native American grantees shall maintain documentation to insure the credibility of the eligibility determination, which shall consist at a minimum of the following:

(1) A completed application for participation; and

(2) Records of all actions taken to correct deficiencies in the eligibility determination procedures.

(e) A participant determined to be ineligible shall immediately be terminated.

(f) A Native American grantee may enter into an agreement with a State employment security agency (SESA) or other independent agency or organization as may be approved by DINAP, for the verification of applicant eligibility within 60 days of enrollment. The Native American grantee shall monitor such verification procedures to ensure that erroneous verifications are not made deliberately or with insufficient care.

(g) Participants may be transferred from one program to another, from one Native American grantee to another, from a Native American grantee to a prime sponsor, from a prime sponsor to a Native American grantee, or concurrently enrolled in programs sponsored by Native American grantees or prime sponsors, provided, except for age requirements, they were eligible for the subsequent or concurrent program when they were first enrolled.

(h) Aliens who are allowed to work permanently in the United States by the Immigration and Naturalization Service, and who otherwise meet the eligibility requirements for programs under this Part, may participate in a program if this is permitted by Indian law or the Native American grantee.

(i) Eligibility determinations for each program shall be made at the time of application. Applicants determined eligible may be enrolled as participants within 45 days of the date of the application without an update of the information on the application provided they did not obtain full-time permanent unsubsidized employment in the interim. This provision does not apply to the Summer Youth Employment Program (SYEP).

§ 688.79 Program linkages.

(a) In designing programs under the Act and in selecting service deliverers, Native American grantees shall give special consideration in carrying out programs to community-based organizations of demonstrated effectiveness in the delivery of employment and training programs (sec. 123(1)).

(b) Consideration shall be given to making use of appropriate services currently available in the community, with or without reimbursement, which the Native American grantee has determined to be effective. Agencies which typically provide such service include, but are not limited to, the State Employment Security Agency, State Vocational Education and Rehabilitation agencies, State public assistance agencies, Bureau of Indian Affairs, Indian Health Service, local educational institutions, community-based organizations and other public agencies. The purpose of this consideration shall be to avoid duplication and to obtain such services at a cost saving rather than establishing another such service or activity (sec. 121(g)).

(c) Each Native American grantee shall to the maximum extent feasible:

(1) Coordinate the employment and training services provided under its plan with those available under other programs funded through the Department of Labor (sec. 103(a)(8));

(2) Coordinate services to veterans provided under this Act with those activities authorized by Chapter 41 of Title 38, United States Code (relating to counseling and employment services to veterans provided by SESA's) and with other similar activities carried out by other public agencies and organizations. Coordinate services with appropriate Veterans Administration facilities in utilizing the apprenticeship and other on-the-job training activities available under Section 1787 of Title 38 U.S.C. (sec. 121(b)); and

(3) Notify the appropriate apprenticeship agency of any training activity in apprenticeship occupations.

(d) Native American grantees shall coordinate services to AFDC recipients with public assistance agencies, and any local sponsor of the Work Incentive Program (WIN).

§ 688.80 Labor organization consultation.

To ensure the most effective development of employment and training opportunities, Native American grantees should provide the opportunity for the participation of organized labor in the planning and design of programs and activities and coordination in the subsequent operation of such programs in those geographic areas where organized labor represents a significant proportion of the work force in industries and occupations available to Indian and Native American workers.

§ 688.81 Employment and training activities.

Native American grantees shall design and operate programs funded under the Act which support growth and development as determined by representatives of the Indian and Native American communities and groups served by CETA funds (sec. 302(b)(3)). The basic types of employment and training activities available to Native

American grantees, subgrantees and contractors include, but are not limited to the following:

§ 688.81-1 Classroom training.

(a) This program activity is any training of the type normally conducted in an institutional setting, including vocational education, and designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education, training in the primary language of persons with limited English-speaking proficiency, or English-as-a-second-language training.

(b) In designing and operating training programs, Native American grantees, subgrantees and contractors shall:

(1) Refer a person for occupational training only after determining that there is a reasonable expectation of employment in the occupation in which such person would be trained (sec. 121(f)(4));

(2) Not refer a person to an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities for that person available in that occupation (sec. 121(f)(2)); and

(3) Train persons only for jobs which are neither in industries nor occupations with lower wages than similar occupations in comparable industries in the area. Notwithstanding the above, training is permissible for such jobs when there exists a training program of a specified length of time designed to teach specific skills, and when the rate of labor turnover does not exced substantially the rates of labor turnover for all jobs in the same area. Data for average wages for comparable industries and the average rate of turnover may be found in the BLS Handbook of Labor Statistics (sec. 123(a)).

§ 688.81-2 On-the-job training.

(a) *General.* (1) On-the-job training (OJT) is training in the private or public sector given to a participant, who has been hired first by the employer, and which occurs while the participant is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job. This does not preclude a participant who has been hired by, and received OJT from, one employer from being ultimately placed with another employer.

(2) OJT may be coupled with other CETA employment and training activities. As needed, OJT participants may receive any of the employment and training services or supportive services specified in § 688.81-5 through the CETA system, through community resources, or through employer resources.

(b) *Participation.* All OJT participants must meet the eligibility requirements described elsewhere in this part. Recipients shall establish procedures for the referral of participants to OJT. These procedures shall insure that, to the maximum extent feasible, those most in need are served.

(c) *Selection.* From among those referred for OJT opportunities, the employer may make the final selection of participants based on suitability for the training opportunity.

(d) *Length of training.* The length of time for which payments from CETA funds may be made shall not exceed that period of time generally required for acquisition of skills needed for the position within a particular occupation (sec. 121(1)). Native American grantees shall develop standardized methods for determining the length of training for OJT occupations, and shall describe or identify such methods in the CETP. The Dictionary of Occupational Titles (D.O.T.), Specific Vocational Preparation (S.V.P.) codes, or other equivalent standardized tools should be used to fulfill this requirement.

(e) *Eligible jobs.* The training limitations in § 688.81-1(b) shall apply to OJT. In the selection of jobs for which training will be offered, Native American grantees shall consider those which provide opportunities not otherwise available, lead to economic self-sufficiency, provide upward mobility, and promote the growth and development of the Indian and Native American communities and groups.

(f) *Reimbursement.* (1) Based upon past experience, DOL has determined that a fixed unit cost method of reimbursement for OJT training costs based on 50 percent of the participant's wages (but not fringe benefits) represents the difference between the costs of recruiting and training and the costs of lower productivity associated with employing CETA participants to perform the job, and the costs for others similarly employed (sec. 121(1)).

(2) To maximize limited available resources, Native American grantees may negotiate lower reimbursement levels with employers.

(3)(i) Should an employer or Native American grantee believe that special circumstances warrant a reimbursement level higher than the 50 percent limitation, each circumstance, along with the specified level and its rationale, shall be presented in the Native American grantee's CETP or any modification to the CETP. Native American grantees may then negotiate OJT agreements under these circumstances at the reimbursement level approved in the CETP without any further DOL approval. The circumstances and the reimbursement level in such cases should also be documented in each OJT agreement.

(ii) If a circumstance not covered in the CETP arises which the Native American grantee believes warrants reimbursement at higher than the 50 percent level, a grant modification shall be submitted. No publication or comment procedures will be required. Once the modification is approved, the Native American grantee may sign the OJT agreement, documenting the approved circumstances and the reimbursement level in the OJT agreement.

(iii) Special circumstances are envisioned as those where the characteristics of the participant indicate greater obstacles to employment than those of the normal CETA participant or where the training would provide the participant with unusually high skills. Examples might include the following, among others: Handicapped or mentally retarded participants; disabled veterans; ex-offenders; exceptionally costly programs providing an above-average quality of training; or training for management level positions in tribal enterprises.

(iv) Native American grantees may provide OJT reimbursement on a scheduled declining ratio to wages over the period of training, as long as the planned average reimbursement does not exceed the specified reimbursement level for the planned period of training. Native American grantees shall monitor the declining reimbursement provisions of OJT agreements closely. Should abuse occur (i.e., significant numbers of participants leaving after the "high end of the scale" reimbursement period), this reimbursement procedure should be immediately altered or curtailed.

(v) In addition to the reimbursement for OJT training costs allowed by the other paragraphs of this section, the actual costs incurred by an employer for classroom training, employment and training services and supportive services for OJT participants (which are different than or above the level of those normally provided by the employer to regular employees) may be reimbursed.

(g) *OJT agreements.* Employers will be held responsible with respect to CETA costs only in accordance with the provisions of their OJT agreements. At a minimum the OJT agreement shall contain the elements listed below.

Native American grantees may place additional provisions in the OJT agreement only after a careful assessment is made of the additional burdens imposed on participating employers. Agreements may be entered into only with employers which have not been seriously deficient in their conduct of or participation in any DOL program pursuant to § 688.41 (sec. 121(o)). Each OJT agreement shall contain:

(1) A brief training outline, including the length of training and the nature of the training;

(2) The method and maximum amount of reimbursement for OJT training costs; justification if the reimbursement amounts exceed 50 percent of the participant's wages;

(3) The number of participants to be trained;

(4) Job descriptions and specification of participant wage rates;

(5) Reporting requirements;

(6) An assurance that payroll records, time and attendance records, job duties and documentation of classroom training, employment and training services, or supportive services, costs for which the employer is being reimbursed will be subject to review;

(7) A termination clause for nonperformance; and

(8) An assurance that the employer will comply with the Act and regulations.

§ 688.81-3 Public service employment.

(a) Public service employment is subsidized employment as defined in § 688.3.

(b) PSE jobs shall be provided, to the extent feasible, in occupational fields which are most likely to expand within the public or private sector (sec. 122(m)).

(c) Except for Federal agencies, PSE jobs shall be developed where the employer has the capacity to provide the best possible employment opportunities. Worksites which can provide employment opportunities should do so as an employing agency. However, where the capacity of a worksite to function as an employing agency is limited by such factors as the lack of administrative capability to accommodate additional employees, it may be considered a suitable site for outstationing. Outstationed participants are still to be considered employees of the employing agency and shall have the same working conditions and benefits as received by other similarly employed employees of the employing agency (not of the outstationed worksite). However, maximum efforts should be made by the employing agency to coordinate such things as work hours and holidays with the worksite.

(d) PSE participants shall not be employed in building and highway construction work (except that which is normally performed by the Native American grantee, subgrantee or contractor) or in any work which does not meet the definition of public service employment contained in § 688.3.

(e) Except for PSE activities under Subpart H and PSE projects under Subparts I and J, PSE jobs shall be entry level (sec. 232(a)(1) and sec. 605(a)).

(f) To the extent feasible, the public services provided by the jobs should be designed to benefit the residents of area (sec. 122(a)).

(g) Native American grantees shall take into account household obligations, and give special consideration to providing alternative working arrangements such as flexible hours of work, work-sharing and part-time jobs, particularly for older workers, and parents of young children (sec. 121(d)(3)).

§ 688.81-4 Work experience.

(a) Work experience is a short-term or part-time work assignment with an employing agency or an organization authorized to employ PSE participants. It is otherwise prohibited in the private-for-profit sector. It shall be designed to enhance the employability of individuals through the development of good work habits and basic work skills. Work experience shall be limited to persons who need assistance in becoming accustomed to basic work requirements including basic work skills, in order to be able to compete successfully in the labor market. Work experience shall not be used as a substitute for PSE. Work experience is for such persons as those who have never worked or who have not been working for an extended period of time, such as students, youth in transition from school to employment, youth with no definite employment goals, the chronically unemployed, retired persons, handicapped individuals, residents of institutions, and older workers who have no alternative job opportunities (sec. 121(i)).

(b) Persons who do not satisfy the conditions of paragraph (a) of this section may be placed in work experience for no more than 30 days while an appropriate classroom training, OJT, PSE or unsubsidized job is being developed for them.

(c) Participation in work experience shall be for a reasonable length of time, based on the needs of the participant, and subject to the restrictions set forth in § 688.86(d)(1).

(d) The provisions of § 688.81-3(g) regarding household obligations and alternative working arrangements shall apply to work experience participants.

(e) Native American grantees may operate a supported work type of work experience.

§ 688.81-5 Services

This program activity includes services to applicants supportive services, employment and training services, and post-termination services. Such services are designed to lead to maximum employment opportunities and retention of employment or to facilitate participation in other employment and training program activities funded under the Act or under other Acts, leading to eventual placement in unsubsidized employment.

(a) *Services to applicants.* Such services include:

(1) Outreach; and

(2) Intake. This includes screening for eligibility; the initial determination as to whether the program can benefit the individual; the determination of which employment and training activities and which services would be appropriate for the applicant; the determination of the availability of an appropriate employment and training activity; a decision on selection; and dissemination of information of the program.

(b) *Employment and training services.* Such services include:

(1) Orientation to the world of work;

(2) Counseling. This includes employment and training related counseling and testing;

(3) Employability assessment (other than that involved during intake);

(4) Job development;

(5) Job search assistance. This includes transition services, such as job seeking skills instruction, individualized job search plan, labor market information, and other special activities for transition to unsubsidized employment;

(6) Job referral and placement; and

(7) Vocational Exploration Program (VEP). A Native American grantee may conduct a VEP program to expose participants to jobs available in the private sector through observation of such jobs, instruction, and, if appropriate, limited practical experience (sec. 432).

(c) *Supportive services.* Such services include:

(1) Health care and medical services;

(2) Child care. Child care programs shall comply with applicable tribal standards or, in the case of nonprofit Native American grantees, applicable State and local standards;

(3) Transportation;

(4) Temporary shelter;

(5) Assistance in securing bonds;

(6) Family planning services. These shall be made available to participants only on a voluntary basis and shall not be a prerequisite for participation in, or receipt of, any services or benefits from the program;

(7) Legal services; and

(8) Financial counseling and assistance.

(d) *Post-termination services.* For 30 days following termination from the program, employment and training services and supportive services, as described in paragraphs (b) and (c) of this section may be provided to participants who have obtained unsubsidized employment to enable them to gain or retain employment.

§ 688.81-6 Other activities.

Native American grantees may conduct employment and training activities not described in §§ 688.81-1 through 688.81-5. The approved CETP shall describe the basic design of activities undertaken as "other activities" and their objectives. These activities may include, but are not limited to:

(a) Removal of artifical barriers to employment;

(b) Job restructuring;

(c) Revision or establishment of merit systems; and

(d) Development and implementation of affirmative action plans, including Indian preference plans and Tribal Employment Rights Office [TERO] programs.

§ 688.81-7 Combined activities.

(a) A participant may be simultaneously or sequentially enrolled in two or more activities.

(b)(1) Reimbursement may be up to 100 percent to employers, including private-for-profit employers, for expenditures for the costs of classroom training, employment and training services or supportive services for participants in combined activities including the costs of participants' wages paid by the employer for time spent in these activities during working hours.

(2) Reimbursement may be made on a cost reimbursement or fixed cost basis and shall be supported by business receipts, payroll, or other records normally kept by the employer.

(3) Nothing in this paragraph (b)(1) shall allow reimbursement to private-for-profit employers for the costs of on-the-job training to exceed the amounts allowable in § 688.81-2.

§ 688.82 Payments to participants.

§ 688.82-1 Payment of wages.

General. Except as authorized under § 688.82-3, each participant in on-the-job training, work experience, and public service employment shall be paid wages.

(a) *Wages for on-the-job training.* Participants in OJT shall be compensated by the employer at such rates, including periodic increases, as are reasonable considering such factors as industry, geographic region, and the participant's skill. In no event shall the wage rate be less than the highest of the following (sec. 124(c)):

(1) The minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act;

(2) The minimum wage rate prescribed by applicable State or local law (sec. 124(c));

(3) The prevailing wage rate for persons similarly employed;

(4) The minimum entrance wage rate for inexperienced workers in the same occupation in the establishment or, if the occupation is new to the establishment, the prevailing entrance wage rate for the occupation in other establishments in the area;

(5) The wage rate required by an applicable collective bargaining agreement; or

(6) The prevailing wage rate established by the Secretary in accordance with the Davis-Bacon Act, when required by § 688.82-1(d) of this section.

(b) *Wages for work experience.* Participants in work experience shall be paid at a wage rate not less than the highest of (sec. 124(d)):

(1) The minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act;

(2) The minimum wage rate prescribed by applicable State of local law;

(3) The prevailing wage rate established by the Secretary in accordance with the Davis-Bacon Act when required by § 688.82-1(d); or

(4) The wage rate required by an applicable collective bargaining agreement.

(c) *Wages for Public Service Employment*—(1) *Minimum wage rates.* A participant in PSE shall be paid wages not less than the highest of the rates specified in (a) (1) through (6) (sec. 124(b)).

(2) *Maximum wage rates payable with CETA funds.* (i) The wages (including those received for overtime work and leave taken during the period of employment) paid to any PSE participant from funds under the Act shall be limited to a full-time rate of $10,000 per year (or the hourly, weekly, or monthly rate which, if full-time and annualized, would equal a rate of $10,000 per year), unless the Secretary adjusts this maximum upward by the area wage adjustment index. For school employees whose work is done only during the school year, that school year shall be considered a full year for wage rate annualization purposes.

(ii) Fringe benefits payable from funds under the Act to any PSE participants may not exceed those regularly afforded to similarly employed non-CETA workers, and shall never exceed those afforded to non-CETA workers earning an amount equal to the maximum wage.

(3) *Average wage rates payable with CETA funds.* The average annual wage rate for PSE participants hired on or after October 1, 1979, shall not exceed $7,200, as adjusted upward or downward by the Secretary on an area basis by the area wage adjustment index. In no case shall this wage be adjusted downward to a level that is less than 10 percent above the annualized Federal minimum wage rate. Where PSE participants are in a part-time (less than a normal full-time schedule for the occupation) PSE position, the average annual wage rate for these participants shall be computed by converting to full-time rates and annualizing the PSE wages. For fiscal year 1980 and each subesquent fiscal year, the average annual wage rate shall be further adjusted by a percentage equal to the change in the average wage rate in employment not supported under the Act (sec. 122(i)).

(4) *Area wage adjustment index.* (i) The Secretary shall publish annually a wage adjustment index for each appropriate area. For each area, the index shall equal the ratio of the annual average wage rate in regular public and private employment in such area to the average wage rate for all such areas.

(ii) The area wage adjustment index shall be used as a basis for adjusting the average and maximum wage rates for areas. With respect to maximum wage rates, the $10,000 shall not be adjusted upward by more than 20 percent, except that this limitation shall not apply to Alaska.

(5) *Supplementation of wages from non-CETA funds.* (i) Except as provided for Title VI PSE participants in § 688.207 and in paragraphs (c)(5) (ii) and (iii) of this section, no PSE participant may be paid wages for any public service employment job from sources other than the Act. For participants hired after September 30, 1978, this applies even if a participant is entitled to a promotion, a general salary increase or overtime pay. Where the participant is eligible for such

an increase which would mean a salary in excess of the area's maximum wage rate, the participant would be entitled to it if other employees similarly employed would receive such benefits. However, because public service employment wages may not be supplemented from sources other than the Act, in such cases participants must be transferred to other positions or be terminated (sec. 122(i)(4)(A)).

(ii) Any PSE participant on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages and may receive any subsequent increase which is either a bona fide cost of living increase or a scheduled raise, so long as the participant remains in the same position or a PSE position with the same or lower wage rate. However, the non-CETA portion shall not be reduced if the maximum wage rate has been adjusted upward above $10,000 after September 30, 1978, until the incumbent participant leaves this position, or until the next Native American grantee budgetary cycle, whichever comes earlier (sec. 122(i)(4)(B)).

(iii) Any PSE participant who was receiving only CETA wages on September 30, 1978, at a wage rate less than $10,000 per year may have such wages supplemented above $10,000 from non-CETA sources after September 30, 1978, if such increase is a bona fide cost of living increase or a scheduled raise, and the person remains in the same position.

(d) *Davis-Bacon wages.* (1) Contractors with the Department shall insure that prevailing wages, as determined by the Secretary pursuant to the Davis-Bacon Act, are paid by themselves and their subcontractors to laborers and mechanics including participants employed in construction (including alteration, repair, painting, decorating, etc.) which is federally assisted under the Act.

(2) Native American grantees shall insure that prevailing wages, as determined by the Secretary pursuant to the Davis-Bacon Act, are paid:

(i) By their contractors and subcontractors to laborers and mechanics, including participants, employed in construction (including alteration, repair, painting, decorating, etc.) which is federally assisted under the Act and related to a facility or building which is used primarily for programs under the Act; and

(ii) To laborers and mechanics, including participants who are employed in construction (including alteration, repair, painting, decorating, etc.) on any project which is funded wholly or partially under a Federal statute, other than CETA, which requires the payment of prevailing wage rates determined in accordance with the Davis-Bacon Act.

§ 688.82-2 Payment of allowances.

(a) *General.* (1) Except for persons receiving incentive allowances, a basic hourly allowance shall be paid to participants for time spent in classroom training. In addition, allowances may be paid to a participant enrolled in *Services* and *Other Activities* when such services or activities are combined with another activity or are provided on a regularly scheduled basis.

(2) No participant may receive allowances for classroom training for more than 104 weeks in a 5-year period (sec. 121(c)(1)).

(b) *The allowance payment system.* A standard system for payment of allowances shall be maintained by every recipient to ensure prompt and efficient payment to all participants (sec. 124(a)). The standard payment system shall consist of a uniform set of procedures, but may be operated by one or more service deliverers. It shall include:

(1) Determination of entitlement and computation of amount to be paid;

(2) Maintenance of a system for requesting payment of training allowances, including the certification, issuance and distribution of payments;

(3) Maintenance of payment records and preparation of required reports;

(4) Maintenance of a system to detect and collect overpayment; and

(5) Arrangements with other agencies to obtain information to minimize unauthorized payments, including arrangements with:

(i) The State Employment Security Agency for verifying the receipt of unemployment compensation by participants (sec. 124(a));

(ii) Appropriate agencies for verification of public assistance payments (e.g., local welfare agencies); and

(iii) Training facilities for submittal of payment requests and certifications of attendance.

(c) *Selection of service deliverer.* The Native American grantee shall provide a standard allowance payment system either directly or through an organization or organizations it considers appropriate for its particular circumstances.

(d) *Basic allowances.* (1) A basic hourly allowance shall, except as provided in paragraphs (h) and (j) of this section, equal the higher of:

(i) The minimum hourly wage prescribed by State or local law for most employment in the recipient's area, multiplied by the number of hours during which the participant attends or is absent for good cause; or

(ii) The minimum hourly wage specified in Section 6(a)(1) of the Fair Labor Standards Act, multiplied by the number of hours during which the participant attends or is absent for good cause.

(2) For participants who are prisoners, all or part of the allowances, as determined by the Native American grantee and the head of the institution, may be held in reserve by the institution and delivered upon the participant's release from the institution. The institution shall not retain any portion of these funds, or interest earned on these funds, while held in reserve.

(e) *Dependent allowances.* (1) An additional $5 a week shall be provided for each dependent from two (2) up to a maximum of four (4) additional dependents for participants receiving basic allowances (sec. 124(a)).

(2) Dependent allowances shall be reduced prorata for absence without good cause. The methodology for making the reduction shall be described in the Native American grantee's CETP (sec. 124(a)).

(f) *Incentive allowances for persons receiving public assistance.* (1) Except for youths receiving allowances under the youth programs described at Subparts K, L, and M of this part, participants receiving public assistance or whose needs or income are taken into account in determining such public assistance payments to others shall receive incentive allowances in the amount of $30 per week, in lieu of basic allowances (sec. 124(a)(3)).

(2) Incentive allowances shall be reduced prorata for absences without good cause. The methodology (e.g., daily or hourly proration) for making the reduction shall be described in the Native American grantee's CETP.

(3) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs (sec. 124(a)(3)).

(g) *Additional allowances.* Additional reasonable allowances, such as allowances for transportation of subsistence, may be paid to participants to cover extraordinary costs associated with participation in an activity. The circumstances in which additional allowances will be paid shall be described in the Native American grantee's CETP (sec. 124(a)).

(h) *Adjustments in allowance.* (1) The basic allowance shall be reduced on a weekly basis by the amount of any unemployment compensation received.

Where eligible, participants should be encouraged to apply for and claim unemployment compensation if they are not already receiving such benefits. The basic allowance shall not be reduced because of any unemployment compensation received prior to enrollment. If unemployment compensation is paid on a biweekly basis, it shall be prorated over the two weeks before the allowance is reduced (sec. 124(a)).

(2) The basic allowance may be adjusted upward if conditions for such increases are described in the CETP.

(3) Periodic increases to the basic allowances may be provided as an incentive to participation when such increases are described in the CETP.

(4)(i) The basic hourly allowance for a participant may be reduced, at the option of the Native American grantee on a weekly basis, by the total amount of any Basic Education Opportunity Grant (BEOG) during the period in which the participant is enrolled in the classroom training; and

(ii) The Native American grantee, however, may make arrangements with the training institution to apply BEOG payment to tuition, books and related training costs normally funded by the Native American grantee. The Native American grantee should then pay the training institution the difference, if any, between the actual training costs and the BEOG.

(5) The basic allowance may be reduced by the amount of wages received by classroom training participants who are also enrolled full-time during the same payment period in work experience, PSE or OJT. The determination of whether the activity is full-time shall be based on the number of hours that constitute full-time employment for employees similarly employed.

(i) *Rounding of amount of allowance payable.* Allowance payments made under this section shall be rounded to the next higher multiple of a dollar.

(j) *Waivers of allowances.* (1) The payment of all or part of the basic allowance may be waived only in accordance with paragraphs (j)(2) or (3) of this section under the conditions described in the CETP. When all or part of the basic allowance is waived, the Native American grantee shall maintain documentation that the waiver accomplishes the goals established by the Native American grantee when requesting the waiver (sec. 123(a)).

(2) Waivers of basic allowances shall be allowable only when the following conditions have been met and documented:

(i) That the waiver will be applied to the total enrollment in a course and will not be imposed on an individual basis, except as provided in paragraph (j)(3) of this section; and

(ii) That the waiver will not have the effect of denying participation to individuals who could not participate without receipt of allowances; and

(iii) That the waiver will increase the number of participants served or the level of services provided; and

(iv) That the waiver will otherwise promote the purposes of the Act; and

(v) That all participants for whom allowances are waived will be so notified in writing; and

(vi) That documentation of the participant's notification of the waiver will be made a part of the participant's record.

(3) In exceptional circumstances, individual waivers, when described in the CETP may be granted under the following conditions:

(i) The waiver is at the written agreement of the participant; and

(ii) All of the funds allocated in the Budget Information Summary for allowances have been obligated and training opportunities are still unfilled and available.

(4) The dependent allowances may not be waived, except in cases where the entire basic allowance is waived.

(5) Allowance payments shall not be waived solely because a participant receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended.

(6) Incentive allowances shall not be waived.

(k) *Repayments.* Native American grantees shall require participants to repay the amount of any overpayment of allowances under this part, except if the overpayment was made in the absence of fault on the part of the participant. Where the Native American grantee requires repayment, any overpayment not repaid may be set off against any future allowance or other payments under the Act to which the participant may become entitled, but in no case shall the wage be reduced below the applicable minimum wage.

§ 688.82-3 Combined activities.

(a) *Primary activity.* A primary activity is one in which a participant is enrolled for more than 50 percent of scheduled time. Participants enrolled in a primary activity for which wages are payable and simultaneously in an activity for which allowances are payable may, at the Native American grantee's option, be paid wages for all hours of participation. A participant enrolled in a primary activity for which allowances are payable may, at the Native American grantee's option, be paid allowances for all hours of participation, except when OJT is the non-primary component. However, in the latter case, before placing an individual in such an activity, the Native American grantee shall request a determination from the Internal Revenue Service as to whether income from the non-primary component is taxable. Nothing in this subsection shall authorize compensation at rates less than those required by

§ 688.82-1(a), (b) and (c).

(b) *Employed participants.* Wages may be paid to a participant enrolled in OJT by the participant's employer for hours spent in classroom training, whether or not such hours constitute a primary component.

§ 688.83 Benefits and working conditions for participants.

(a) *General.* (1) Each participant in OJT, PSE, or work experience shall be assured of workers' compensation including medical, accident, and income maintenance insurance at the same level and to the same extent as others similarly employed who are covered by a workers' compensation statute or system (sec. 121(d)(5)).

(2) Each participant who is employed or engaged in any CETA program activity where others similarly employed or engaged are not covered by an applicable workers' compensation statute shall be provided with medical and accident insurance coverage. Such coverage shall be adequate and comparable to the medical and accident insurance provided under the applicable State workers' compensation statute. Native American grantees are not required to provide these participants with income maintenance coverage (sec. 121(d)(5)).

(b)(1) Each participant in an on-the-job training or public service employment program shall also be provided health insurance, collective bargaining agreement coverage, and other benefits and working conditions at the same level and to the same extent as other employees similarly employed (sec. 122(k)).

(2) All classifications with respect to employment status (e.g., full time, permanent, or temporary) in which CETA participants are placed shall be reasonable and shall include non-federally financed employees (sec. 122(k)). Where only federally subsidized employees work for an employer, classifications may be limited to them.

(3) Classifications shall not be established exclusively for CETA

participants not shall participants be placed in existing or new classifications in order to reduce or deny benefits to which they are entitled.

(4) Within a single classification, a distinction may be made between CETA participants and other employees with respect to retirement systems or plans which provide benefits based on age or service or both pursuant to § 688.84 (sec. 122(k)).

(c) (1) PSE and OJT participants who are paid wages and who perform services that are the same or similar to other employees of the employer who have unemployment compensation coverage shall be provided unemployment compensation coverage by election if such coverage is not otherwise required by the applicable State unemployment compensation law.

(2) Unemployment compensation coverage is not provided to work experience participants unless otherwise required under State unemployment compensation law. Most States do not provide unemployment compensation coverage for work experience participants.

(3) In order to ensure unemployment compensation coverage of appropriate CETA participants, Native American grantees must ensure that employers submit quarterly contribution and wage reports or their equivalent required by the SESAs for PSE and OJT participants, and for work experience participants where they are covered by State unemployment compensation provisions.

(d) Conditions of employment and training shall be appropriate and reasonable, in light of such factors as the type of work, geographical region, and proficiency of the participant (sec. 121(d)(1)).

(e) Every participant, prior to entering upon employment or training, shall be informed of his or her rights and benefits in connection with such employment or training including the information that family planning services are voluntary. Participants shall be informed of the name of their employer and the complaint and hearing procedure applicable to them pursuant to Subpart G (sec. 121(a)(3)).

(f) No participant will be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety. Participants employed or trained for inherently dangerous occupations, e.g., fire or police jobs, shall be assigned to work in accordance with reasonable safety practices (sec. 121(d)(2)).

§ 688.84 Retirement benefits for participants.

§ 688.84-1 General rules.

(a) *Exclusion.* CETA participants may be excluded from retirement systems or plans which provide benefits based on age or service or both which cover similarly employed, non-CETA employees (sec. 122(k)).

(b) *Use of CETA funds—general.* Where, however, the CETA participants are included in a retirement system or plan, CETA funds may not, except as provided in paragraph (c) of this section, be used for a contribution to such system or plan on behalf of a participant unless such contribution bears a reasonable relationship to the cost of providing benefits to that participant (sec. 121(j)).

(c)(1) *Use of CETA funds—grandfather.* CETA funds may be used for contributions to retirement systems or plans on behalf of participants (for the duration of their participation):

(i) Who are enrolled in PSE or work experience on June 30, 1979; and

(ii) Who are enrolled in a retirement system or plan on June 30, 1979.

(2) For those Native American grantees which were in compliance with the provisions of paragraph (b) of this section before July 1, 1979, the date of compliance shall be substituted for June 30, 1979 in paragraph (c)(1) of this section.

(d) *Description of method adopted.* When a Native American grantee intends to use CETA funds for retirement contributions on behalf of participants, the method for doing so shall be described in the CETP.

(e) *Extensions.* Extensions for compliance with the provisions of § 688.84 may be granted, upon written request accompanied by adequate justification for the extension, by the Director, DINAP, with the approval of the Office of the Solicitor, to a Native American grantee until December 31, 1979.

§ 688.84-2 Allowable cost.

(a) *Definitions.* For purposes of this section:

(1) *"Employer"* shall include any employer whose employees are covered by a retirement system or plan under which periods of CETA participation are creditable toward benefit entitlements.

(2) *"Unsubsidized Employment"* means employment for which wages are not paid from CETA funds.

(b) *Reasonable relationship.* A contribution by an employer to a retirement system or plan shall be considered to bear a reasonable relationship to the cost of providing benefits to CETA participants if the requirements of one of the methods authorized in paragraphs (c), (d), (e), or (f) of this section are met. These methods are the following:

(1) Vesting method;

(2) Actuarial methods;

(3) Reserve account/buy-back method; and

(4) Alternative methods.

(c) *Vesting methods.* This method is available only with respect to retirement systems or plans of other than the "defined benefit" type. An employer may use CETA funds to make a contribution to a retirement system or plan only to the extent that the contribution is allocated to the CETA participant and only to the extent that the contribution is vested at the time it is made. A contribution by an employer to a retirement system or plan shall be deemed to be "vested" to the extent that, at the time when the contribution is made, the portion of the participant's account balance in the retirement system or plan derived from employer contributions is not subject to forfeiture.

(d) *Actuarial method.* This method is available only with respect to retirement systems or plans of the "defined benefit" type (a system or plan under which a specified benefit is promised to employees at retirement). Under this method an employer may use CETA funds to make a contribution to a retirement system or plan only on the basis of a separate actuarial determination that there is a reasonable likelihood that CETA participants will actually receive benefits as a result of the contribution and then only in an amount sufficient to fund benefits for this group of participants. The amount of employer contributions shall be determined on the basis of reasonable actuarial assumptions which take into account the unique characteristics of CETA participants, including the short-term nature of CETA participation. The calculation shall be revised at least annually to reflect the actual experience of CETA participants. The basic rule under this method is that CETA funds expended for an employer contribution to a retirement system or plan may not exceed the present value, determined as of the date the contribution is made, of the benefits which CETA participants accrue in that year, reduced by any contributions made by CETA participants during that year.

(e) *Reserve account/buy-back method.* (1) This method is available for both defined benefit and other types of retirement systems or plans. This method can only be used for CETA participants who were excluded from coverage in the retirement system or

plan while they were CETA participants. Under this method, the employer may make a contribution for the previous service using funds from the then current CETA grant in an amount described in paragraph (e)(3) of this section if:

(i) A former CETA participant obtains unsubsidized employment with the employer (within a time specified in paragraph (e)(2) of this section); and

(ii) The former CETA participant is granted credit under the retirement system or plan for the period of CETA participation; and

(iii) Where employee contributions are required, the employee elects to participate in the retirement system or plan by making contributions under the reserve account or buy-back systems described in paragraph (e)(2) of this section.

(2)(i) *Buy back.* A former CETA participant who, within 90 days after termination of the period of CETA participation, obtains unsubsidized employment with the employer in a position which entitles the individual to earn credit for the period of CETA participation under the system or plan shall be given an opportunity to make a contribution or contributions to the retirement system or plan within 18 months after obtaining unsubsidized employment. The amount of the contribution shall be no greater than the sum of:

(A) The contributions which such individual would have been required to make during the individual's period of CETA participation in order to obtain credits for that period under the plan or system, and

(B) Interest on the amounts described in paragraph (e)(2)(i)(A) of this section equal to the return the system or plan would have earned on the contributions.

(ii) *Reserve account.* Any individual, who is a CETA participant, and who might be eligible to receive credit under the employer's retirement system or plan for CETA service in the event that such individual obtains unsubsidized employment with the employer upon leaving CETA, shall be permitted to authorize deductions to be made from salary or wages during CETA participation in amounts equal to the contributions to the retirement system or plan which the individual would be required to make if the individual were not excluded from participation in the retirement system or plan during CETA participation. Any such deductions shall be credited to a reserve account and such account shall be credited with interest in amounts equal to the return the system or plan would have earned on the deductions. If the individual obtains unsubsidized employment with the employer in a position which entitles the individual to earn credit under the retirement system or plan immediately after termination of the period of CETA participation, and so elects, the balance in the reserve account shall be transferred to the retirement system or plan; otherwise the balance shall be distributed in full to the individual.

(3) CETA funds may be expended for an employer contribution to the retirement system or plan under this method only to the following extent: (i) In the case of a plan other than one of the "defined benefit" type, the amount of the contribution may be no greater than the amount by which the former CETA participant's account balance in the retirement system or plan would have increased during CETA participation as a result of employer contributions if they had been made during that period.

(ii) In the case of a plan of the "defined benefit" type, the amount of the contribution can be no greater than the present value of the additional accrued benefits which the former CETA participant accrues as a result of the credit granted for CETA participation. Present value shall be determined on the basis of reasonable actuarial assumptions, but such assumptions need not take into account the unique characteristics of former CETA participants.

(f) *Alternative methods.* Upon the written approval of the assistant Secretary, CETA funds may be used in accordance with methods which are combinations of the methods described in paragraphs (c), (d), and (e) of this section, or in accordance with any alternative method which assures that the employer's contribution to a retirement system or plan bears a reasonable relationship to the cost of providing benefits to the CETA participants.

§ 688.84-3 Packages of benefits.

(a) Where non-CETA, similarly employed employees are covered under a benefits package which includes retirement, CETA participants shall receive the nonretirement benefits (e.g., health, death, and disability benefit coverage), at the same level and to the same extent as other employees. CETA funds may be used to pay for those benefits in accordance with § 688.83(b) (sec. 122 (k)).

(b) CETA funds may be used to purchase a package of benefits including retirement, provided the retirement portion of the package can be factored out of the package and adjusted according to the methods described in §688.84.

§ 688.84-4 FICA.

Expenditures may be made from CETA funds for taxes under the Federal Insurance Contribution Act (FICA), 26 U.S.C. 3101, *et seq.*

§ 688.85 Non-Federal status of participants.

Participants shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment.

§ 688.86 Termination conditions; participant limitations.

(a) When a suitable job offer or offer of referral to a suitable job is made to and rejected by a participant, this can be acceptable grounds for termination of the participant by the Native American grantee regardless of how long the individual has been in the program. Suitable job shall mean a job which is:

(1) Comparable to the participant's CETA job in terms of working conditions and benefits; and

(2) Commensurate with his or her skill level; and

(3) Located within a commuting distance of the participant's home comparable to the distance travelled by others in the jurisdiction similarly employed; and

(4) Not vacant due to a strike or lockout or based on a requirement that an employee must resign from a union.

(b) A Native American grantee which has not successfully placed a participant in appropriate unsubsidized employment or training within the established time limits for participation set forth in paragraphs (d) and (e) of this section shall provide the participant with written notice of the impending termination and a contact person for questions and further information at least two (2) weeks prior to the effective date. A dated copy of the notice shall be maintained with the participant's file.

(c) Except as provided in paragraph (g) of this section and for participants in programs that have other statutory limits, e.g. YCCIP, participation in work experience shall be limited to a maximum of 1,000 hours during any one year, and 2,000 hours during the five year period beginning October 1, 1978, or the subsequent date of the participant's initial enrollment in CETA.

(d) Except as provided in paragraphs (h) and (i) of this section, no participant may receive wages for PSE for more than 78 weeks during a five year period beginning October 1, 1978, or the subsequent date of the participant's initial enrollment in CETA. In computing

this 78 weeks, recipients shall include any PSE participation from April 1, 1978, to October 1, 1978 (sec. 122(h)(2)).

(e) No participant may receive allowances for classroom training for more than 104 weeks in a 5 year period beginning on the date of the participant's enrollment into CETA (sec. 121(c)(1)).

(f) Except as otherwise provided in paragraphs (g) and (h) of this section, Native American grantees shall limit participation in CETA by any person to a maximum of 30 months during a 5-year period beginning October 1, 1978, or the subsequent date of the participant's initial enrollment in CETA (sec. 121(c)(2)).

(g) The limitation on work experience participation in CETA set forth in paragraph (c) of this section:

(1) Shall not apply to time spent by in-school youth enrolled in a work experience program under the Act, nor shall such time be included in determining if an individual has reached such limitations or the limitation on total participation in CETA set forth in paragraph (f) of this section (secs. 121(c)(2), 121(i) and 212(b)); and

(2) May be waived by DINAP with respect to time spent by other persons enrolled in a work experience program under the Act based on the inclusion in the CETP, or subsequent modification to the CETP, of satisfactory evidence that, due to the lack of alternative job opportunities in the area, this limitation is impractical. Depending on the circumstances in the Native American grantee's area, the waiver may be granted for all work experience participants or for one or more subgroups, such as older workers. Those individuals granted waivers from the 30-month limitation may continue to participate after the 30-month period has elapsed if they continue in a work experience activity (secs. 121(c)(2) and 212(b)).

(h) A temporary waiver of the limitations set forth in paragraphs (d) and (f) of this section may be granted by DINAP for a limited number of PSE participants hired prior to October 1, 1978, in programs conducted by the Native American grantee (sec. 122(h)(4)(A)).

(i) A temporary waiver of the limitation in paragraph (d) of this section of not more than 12 months may be granted by DINAP for PSE participants hired on or after October 1, 1978, in the case of an area which is served by a Native American grantee which has an unemployment rate of at least 7 percent and has faced unusually severe hardship in its efforts to transition public service employment participants into regular public or private employment not supported under the Act (sec. 122(h)(4)(B)).

(j) A Native American grantee desiring a waiver under paragraphs (h) or (i) of this section for itself or for any portion of its service area shall make a request to DINAP. This request shall be submitted not more than 60 days prior to the scheduled termination date of any participant or group of participants for whom the extension is being requested. The documentation to be supplied with such request shall include:

(1) A description of labor market conditions in the area indicating the extent of difficulty in transitioning PSE participants into unsubsidized employment;

(2) The unemployment rate in the area involved in the request;

(3) A general description of the efforts which have been made to place PSE participants in unsubsidized employment;

(4) The time extension being requested; and

(5) The impact which the termination of such participants would have on services being provided within the Native American grantee's service area.

(k) In considering requests for extensions under the provisions of paragraphs (h) or (i) of this section, DINAP shall pay special attention to the limited opportunities for unsubsidized employment available in many Indian and Native American communities and to the impact which the termination of such participants may have upon the delivery of needed services in such communities.

(l) DINAP shall notify the Native American grantee in writing of its approval or disapproval of the request for extension within 30 days of receipt. When DINAP disapproves a request for an extension, it shall include in the written notice of disapproval the specific reasons for the disapproval.

(m) A Native American grantee may adopt a procedure for granting applications for extensions for individual participants under the provisions of paragraphs (h) or (i) of this section. Such procedures must be approved in writing by the Director of DINAP and shall include the following minimum criteria:

(1) Full written disclosure to the governing body of the Native American grantee of the advantages, disadvantages, conflicts and other pertinent facts related to the request for extension;

(2) Documentation showing that the participant would benefit from continued employment or participation in programs funded under the Act; and

(3)(i) Documentation clearly showing that maximum feasible efforts have been made to secure unsubsidized employment for the participant, and that the Native American grantee was unable to place the participant in such employment; or

(ii) Documentation showing that the participant is performing services vitally needed by the community in the economic development, education, health, or social service area, or in another important area.

§ 688.87 Nondiscrimination and equal employment opportunity.

(a) No person shall on the grounds of religion, sex, age, handicap or political affiliation or belief:

(1) Be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under the Act (sec. 121(a) and 132(a)); or

(2) Be denied employment in the administration, or operation of, or in connection with, any program or activity funded in whole or in part under the Act (secs. 121(a) and 132(a)).

(b) This section shall not be interpreted to prohibit the implementation of a policy of Indian preference by any Native American grantee (sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450)).

§ 688.88 Equitable provision of services to the eligible population and significant segments.

(a) Native American grantees shall ensure that all members of the eligible population within the service area for which the grantee was designated are afforded an equitable opportunity for employment and training activities and services available under each program under the Act (secs. 121(b)(1) and 122(a)).

(b) When planning and developing employment and training opportunities under each program under the Act, Native American grantees shall consider the relative numbers of persons in the demographic groups (age and sex) and the number of handicapped individuals within the eligible population, taking into account the needs of these groups. The Native American grantee's CETP, with respect to each program, shall include a description of the proposed levels of participation for each of these groups and adequate justification where those levels of participation vary from the group's incidence in the eligible population.

(c) The grantee shall take positive steps, such as active recruitment and special consideration in placement, to

ensure that the planned levels of participation described in the CETP are realized.

§ 688.89 Procedures for serving specific target groups.

(a) Native American grantees shall take appropriate steps to provide for the increased participation of qualified special disabled and Vietnam-era veterans with special emphasis on qualified veterans who served in the Indo-China theater on or after August 5, 1964, and on or before May 7, 1975, through assuring adequate training and employment opportunities for such veterans in their programs (sec. 121(b)(2)).

(b) Public service employment programs.

(1) Within a PSE program, preference in enrollment shall be given to those who are the most severely disadvantaged in terms of length of unemployment and their prospects for finding unsubsidized employment (sec. 122(b)(1)).

(2) Native American grantees shall give special consideration in filling public service jobs to qualified public assistance recipients (or persons who would be eligible to receive public assistance according to established criteria if they would apply for such assistance), and special disabled and Vietnam-era veterans (sec. 122(b)).

(c) Native American grantees shall provide special emphasis to eligible persons who are offenders, persons of limited English language proficiency, handicapped individuals, women, single parents, displaced homemakers, youth, older workers, and individuals who lack education credentials (sec. 122(b)).

Subpart F—Prevention of Fraud and Program Abuse

§ 688.115 General.

(a) To ensure the integrity of the CETA programs special efforts are necessary to prevent fraud and other program abuses. "Fraud" includes deceitful practices and intentional misconduct, such as willful misrepresentation in accounting for the use of program funds. "Abuse" is a general term which encompasses improper conduct which may or may not be fraudulent in nature. While any violation of the Act or regulations may constitute fraud or program abuse, this Subpart F identifies and addresses those specific program problems which were of most concern to the Congress during the reauthorization of CETA.

(b) This subpart sets forth specific responsibilities of Native American Grantees, subgrantees and contractors and of the Secretary to prevent fraud and program abuse in CETA programs.

§ 688.116 Conflict of interest.

(a) No member of any council under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member or any organization which such member directly represents or on any matter which would financially benefit such member or any organization such member represents (sec. 121(h)(2)).

(b) Each Native American grantee, subgrantee or contractor shall avoid personal and organizational conflict of interest in awarding financial assistance and in the conduct of procurement activities involving funds under the Act in accordance with the code of conduct requirements set forth in 41 CFR 29–70.216–4 (sec. 123(g)).

(c) Neither the Secretary nor any Native American grantee, subgrantee or contractor shall pay funds under the Act to any nongovernmental individual, institution or organization to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor (sec. 121(h)(1)).

§ 688.117 Kickbacks.

No officer, employee or agent of any Native American grantee, subgrantee or contractor shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential subgrantee, contractor or supplier (sec. 123(g) and 41 CFR 29–70.216–4).

§ 688.118 Comingling of funds.

Native American grantees shall comply with the applicable requirements of 41 CFR 29–70.201.2, regarding separate bank accounts (sec. 123(g)).

§ 688.119 Charging of fees.

(a) No funds under the Act shall be used for the payment of a fee charged to an individual for the placement of that individual in a training or employment program under the Act.

(b) No person or organization, including private placement agencies, may charge a fee to any individual for the placement or referral of that individual in or to any CETA program.

(c) Any contract requiring the individual to pay such fees, therefore, shall not render the individual liable for such fees (sec. 123(j)).

(d) Nothing in this section shall be interpreted as prohibiting the Native American grantee, subgrantee or contractor from entering into an agreement for the purpose of obtaining outreach, recruitment or intake services and placement of participants into unsubsidized jobs, as part of its approved CETP: *Provided,* The individuals served are not charged a fee.

§ 688.120 Nepotism.

(a) No Native American grantee, subgrantee, contractor or employing agency shall permit the hiring of any person in a staff position or as a participant if that person or a member of that person's immediate family is employed in an administrative capacity by the Native American grantee, subgrantee or contractor. The Native American grantee may waive this requirement if adequate justification is documented. The following are examples where the nepotism provision may be waived:

(1) if there are no other persons eligible and available for participation or employment by the Native American grantee;

(2) Where the Native American grantee's total service population is 2,000 or less or where the geographical situation of an Indian or Native American community is rural and isolated from other communities within the designated service area; or

(3) Where the potential participant has a history of unemployment or dependence on public assistance.

(b) A Native American grantee may develop its own nepotism policy in lieu of the policy in paragraph (a) of this section. Any such policy shall have adequate safeguards to prevent persons employed in an administrative capacity for the Native American grantee, its subgrantees or contractors from using such position to secure CETA services or other benefits for a member of his or her immediate family. A satisfactory policy shall include the following minimum criteria:

(1) All formal personnel procedures shall be followed;

(2) There shall be full written disclosure to the governing body describing all advantages, conflicts and/or disadvantages which may result from the specific personnel action; and

(3) No member of the immediate family of the applicant shall participate in the applicant's selection.

The Director, DINAP, shall review any such policy before its implementation and shall approve or disapprove it.

(c) For purposes of this section, the term "immediate family" means wife, husband, son, daughter, mother, father, brother, and sister. The term "staff position" includes all CETA staff positions funded under the Act such as instructors, counselors, and other staff

involved in administrative, training or service activities. The term "employed in an administrative capacity" includes those persons who have overall administrative responsibility for a program including: All elected and appointed officials who have any responsibility for the obtaining of or approval of any grant funded under this Part as well as other officials who have any influence or control over the administration of the program, such as the project director, deputy director and unit chiefs; and persons who have selection, hiring, placement or supervisory responsibilities for participants in a Native American employment and training program. The term excludes officials of entities belonging to a consortium who are not at the same time officials of the consortium. Persons serving on a Native American grantee's planning council, youth council, or PIC shall not be considered to be in an administrative capacity.

§ 688.121 Child labor.

All Native American grantees, subgrantees and contractors shall comply with applicable Federal, State, tribal and local child labor laws.

§ 688.122 Political patronage.

(a) No Native American grantee, subgrantee or contractor may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advance of employees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature, is prohibited.

(b) There shall be no selection of subgrantees or contractors based on political affiliation (sec. 123(g)).

§ 688.123 Political activities.

(a) No program under the Act may involve political activities (sec. 131(a)).

(b) No participant may engage in partisan or nonpartisan political activities during hours for which the participant is paid with CETA funds.

(c) No participant may, at any time, engage in partisan or nonpartisan political activities in which such participant represents himself or herself as a spokesperson for the CETA program.

§ 688.124 Lobbying activities.

No funds provided under the Act may be used in any way:

(a) To attempt to influence in any manner a member of Congress to favor or oppose any legislative or appropriation by Congress (sec. 123(g) and 18 U.S.C. 1913); or

(b) To attempt to influence in any manner State or local legislators to favor or oppose any legislation or appropriation by such legislators (sec. 123(g)).

§ 688.125 Sectarian activities.

(a) No funds under the Act may be used to support any religious or anti-religious activity. However, this does not preclude religious organizations from administering or operating CETA programs or from the use of the facilities of religious organizations for the operation of such programs within the limits set forth in the Act or other applicable law.

(b) Section 121(a)(2) of the Act (29 U.S.C. 833(a)(2)) provides that:

> Participants shall not be employed on the construction, operation or maintenance of so much of any facility as is used or will be used for sectarian instruction or as a place of religious worship.

Section 123(g) of the Act (29 U.S.C. 825(g)) provides that the Secretary, by regulation, shall establish such standards and procedures for recipients of funds under the Act as are necessary to assure against program abuses including, but not limited to, the use of funds for religious or antireligious activities. Pursuant to these statutory provisions, a participant may not be employed by a religiously affiliated elementary or secondary school to perform the functions of a teacher, librarian, guidance counselor, janitor or maintenance worker, clerical worker or teacher aide unless the participant is performing functions or working in programs such as those described in paragraphs (c) or (e) of this section. In applying this prohibition, it is the function actually to be performed by the participant that is to be regarded as controlling, rather than the technical job title given the participant. For example, it would be permissible for a participant (whatever the participant's title) to be employed as an escort to bring students safely to and from school.

(c) Religiously affiliated elementary or secondary schools, may, subject to supervision by the Native American grantee, employ participants in programs such as adult education, recreation, summer programs or other similar activities including remedial tutorial activities: *Provided,* That such programs are not offered during regular school hours, are not a part of the regular school curriculum (including summer school), are open to the community at large, and in which the community is encouraged to participate: *And provided further,* That such programs do not involve religious activities.

(d) Nothing in this section shall preclude a Native American grantee, or one of its contractors or subgrantees other than religious organization, from outstationing a participant to a religiously affiliated elementary or secondary school for the purpose of providing remedial education services: *Provided,* That such services do not involve religious activities: *and provided further,* That the Native American grantee, contractor or subgrantee complies with the Elementary and Secondary Education Act, 20 U.S.C. 241(e), and the regulations thereunder at 20 CFR Parts 1801 *et seq.*

(e) Participants may be employed by a religiously affiliated elementary or secondary school in the following capacities, or performing functions characteristic of these capacities:

(1) Cafeteria work or other work directly related to the provision of food services to students including clerical, custodial or maintenance work related to such services;

(2) Diagnostic or therapeutic speech and hearing services including clerical work related to such services;

(3) Nursing or health services or any other activities relating to the health or safety or students (e.g. assisting on school buses or in escorting children to and from school, acting as attendance clerks or school crossing guards, removing asbestos hazards or performing other similar emergency service relating to the health or safety of students), including clerical work related to such services;

(4) Any functions (including secretarial or clerical activities) where such activities are limited to providing support services for the administration of federally funded or regulated programs made applicable to religious institutions;

(5) Functions performed with respect to the administration and grading of State-prepared examinations; and

(6) Custodial child care after school hours provided the participant is not providing educational services.

(f) The Director, DINAP, may consider, on a case-by-case basis, applications for participation in programs other than these set forth in paragraphs (c), (d), and (e) of this section and may approve those applications for programs that are not inconsistent with the requirements of this section.

§ 688.126 Unionization and antiunionization activities; work stoppages.

(a) No funds under the Act shall be used in any way to either promote or oppose unionization (sec. 123(g)).

(b) No participant in work experience or public service employment may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, participants in affected positions must:

(1) Be relocated to positions not affected by the dispute; or

(2) Be suspended through administrative leave or other means; or

(3) Where participants belong to the labor union involved in the work stoppage, they shall be treated in the same manner as other members of the union except that they may not remain in the affected positions. The grantee shall make every effort to relocate participants who wish to remain working into suitable positions unaffected by the work stoppage.

(c) No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the periods of work stoppage.

§ 688.127 Maintenance of effort.

(a) To ensure maintenance of effort under all programs under the Act:

(1) Native American grantees, subgrantees and contractors shall ensure that such programs:

(i) Result in an increase in employment and training opportunities over those which would otherwise be available (sec. 121(e)(1));

(ii) Not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of nonovertime work, wages, or employment benefits (sec. 122(e)(2)); and

(iii) Not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed (sec. 121(e)(3) and (g)(1)), including services normally provided by temporary, part-time or seasonal workers or through contracting such services out; and

(iv) Result in the creation of jobs that are in addition to those that would be funded in the absence of assistance under the Act (sec. 121(g)(1)(B)).

(2) Funds under this Act shall supplement, and not supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs (sec. 121(g)(1)(C)).

(b) In addition to the requirements of paragraph (a) of this section, for public service employment programs under this Act:

(1) Native American grantees, subgrantees and contractors shall ensure that such public service employment positions shall not:

(i) Substitute for existing federally assisted jobs (sec. 122(e)); and

(ii) Be created in any promotional line that will infringe in any way upon promotional opportunities of persons currently in jobs not funded under the Act (sec. 122(d));

(2) Whenever a promotional freeze affects non-CETA funded employees it shall apply to CETA participants similarly employed.

(3) No participant shall be hired into, or remain working in, any position when:

(i) The same or substantially equivalent position is vacant due to a hiring freeze, unless the Native American grantee can demonstrate that the freeze resulted from lack of funds to sustain staff levels and was not established in anticipation of the availability of funds under the Act; or

(ii) Any other person not supported under the Act or by other Federal funds (other than general revenue sharing) is on lay-off from the same or any substantially equivalent job. The same or equivalent job means any job or classification for which:

(A) Pursuant to a personnel code or practice, or pursuant to a collective bargaining agreement, a recall list or other reemployment policy is in effect as to former employees, who have the first right to any job vacancies occurring within a specific period of time in the positions; or

(B) If there is no recall list, or other reemployment policy, practice or contractual obligation, one or more employees have been laid off, due to a lack of funds or work, from a job in that type of position during the last operating year of the department, agency, etc. (sec. 122(c)(1)).

(4) When a termination of CETA participants is imminent due to conditions noted in paragraph (b)(3) of this section, the Native American grantee shall make every feasible attempt to place such participants into other nonaffected positions or otherwise attempt placement into unsubsidized jobs or into another CETA program or activity.

(5) No former employee laid off or terminated in anticipation of CETA funding of a position may be rehired under CETA into such a position.

(6) A Native American grantee, subgrantee or contractor shall not use CETA funds to intentionally reduce, or in any manner which results in a reduction of, the customary level of public service provided by itself or another public entity in the area, by allowing PSE participants to be placed with or outstationed to private nonprofit organizations.

(c) Native American grantees shall notify DINAP in writing of any layoff or hiring freeze and of any recall rights of employees on lay off, in a department, agency, etc. where public service employment participants are employed. Native American grantees shall, at the direction of DINAP, submit documentation and budgetary expenditure records, revenue statements, and other available information relevant to a determination under this section.

§ 688.128 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.

The criminal provision of 18 U.S.C. 665 states:

(a) Whoever, being an officer, director, agent or employee of, or connected in any capacity with, any agency receiving financial assistance under the Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals; embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(b) Whoever, by threat of procuring dismissal of any person from employment, or of refusal to renew a contract of employment in connection with a grant or contract of assistance under the Comprehensive Employment and Training Act, induces any person to give up any money or thing of any value to any person (including such grantee agency) shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(c) Any person whoever willfully obstructs or impedes, or endeavors to obstruct or impede, an investigation or inquiry under the Comprehensive Employment and Training Act or the regulations thereunder, shall be punished by a fine of not more than

$5,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(d) In addition to the criminal provisions set forth in paragraphs (a), (b) and (c) of this section, individuals may be held criminally liable under other Federal laws. For example, 18 U.S.C. sections 600 and 601 hold them liable if they:

(1) Directly or indirectly promise any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by funds under the Act, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of, or opposition to, any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office (18 U.S.C. 600); or

(2) Directly or indirectly knowingly cause or attempt to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of any employment or benefits funded under the Act (18 U.S.C. 601).

§ 688.129 Responsibilities of Native American grantees, subgrantees and contractors for preventing fraud and program abuse and for general program management.

(a) Each Native American grantee, subgrantee and contractor shall establish and use internal program management procedures sufficient to prevent fraud and program abuse. The procedures to be used shall be identified in the Native American grantee's CETP.

(b) Each Native American grantee, subgrantee and contractor shall ensure that sufficient, auditable, and otherwise adequate records are maintained which support the expenditure of all funds under the Act. Such records shall be sufficient to allow the Secretary to audit and monitor the Native American grantees', subgrantees' and contractors' programs and shall include the maintenance of a management information system in accordance with the requirements of § 688.36.

(c) DINAP shall provide all Native American grantees with technical assistance and guidance in the development of functional procedures for the internal monitoring of all CETA programs operated by the grantees in order to prevent fraud and abuse in such programs. Such technical assistance and guidance shall give recognition to the variation in administrative structures and level of administrative funding available to individual grantees.

Subpart G—Complaints, Investigations and Sanctions

§ 688.146 General.

The regulations on complaints, investigations, and sanctions shall be as described in 20 CFR 676.81 through 676.93 with the following exceptions:

(a) The term "recipient" shall mean "Native American grantee";

(b) The term "subrecipient" shall mean "Native American subgrantee";

(c) The term "Grant officer" shall mean the "Director, DINAP";

(d) Those provisions of § 676.81 through § 676.93 which specifically refer to "prime sponsors" shall not apply to Native American grantee programs;

(e) Section 676.86(g) shall not be applicable to Native American grantees. However, with the consent and cooperation of tribal agencies charged with the administration or enforcement of tribal laws, the Secretary, for the purpose of carrying out this subpart and sec. 133 of the Act, may use the services of tribal employees, and may reimburse, in whole or in part, such tribal agencies and their employees for services rendered for such purposes; and

(f) With respect to denials of Native American grantee designation, and with respect to disapprovals in whole or in part or conditioned approvals of CETPs, the provisions of the following § 688.147 shall supersede the regulations at §§ 676.86, 676.87 and § 676.88(a)–(e) with respect to the handling of complaints at the Federal level.

§ 688.147 Review of denial of designation as a Native American grantee, or rejection of a comprehensive employment and training plan.

(a) An applicant for designation as a Native American grantee which is refused such designation may file a Petition for Reconsideration with DINAP within 14 days of receipt of a letter from DINAP indicating its failure to be designated as a Native American grantee.

(1) A Petition for Reconsideration shall be in writing, shall be signed by a responsible official of the applicant entity, and shall enumerate the factors which the applicant entity asserts should be reviewed by DINAP in reconsidering the denial of its application.

(2) Upon receipt of the Petition for Reconsideration, DINAP shall, within 30 days, make one of the following determinations:

(i) That based on the available information from the original request for designation and information supplied in the Petition for Reconsideration, the applicant entity should be designated as a Native American grantee;

(ii) That the original determination made by DINAP was correct; or

(iii) That an informal conference between representatives of the applicant entity and DINAP shall be held at a specified time and place to discuss the Petition for Reconsideration.

(3) If an informal conference is held, the applicant entity shall have the opportunity to present any pertinent information which may further substantiate its Petition. DINAP shall notify the applicant entity of its final decision within 14 days after the informal conference is held.

(4) All final determinations of the Director, DINAP, which deny a Petition for Reconsideration, shall be in writing, shall state the reasons for the denial, shall be sent to the applicant by certified mail, return receipt requested, and shall notify the applicant entity that, within 30 days of its receipt of the notice, it may request a hearing pursuant to § 676.88(f).

(b) A designated Native American grantee whose CETP has been rejected, may file a Petition for Reconsideration pursuant to paragraph (a) of this section. Such petitions shall be handled under the procedures described in paragraph (a) of this section.

Subpart H—Comprehensive Employment and Training Programs Under Title III, Section 302

§ 688.170 Purpose.

It is the purpose of Title III, Section 302, of the Act to provide job training and employment opportunities for economically disadvantaged, unemployed or underemployed Indians, Alaskan Natives, and Native Hawaiians and to assure that such training and other services lead to maximum employment opportunities and enhanced self-sufficiency. All programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by such programs (sec. 302(b)(3)).

§ 688.171 Eligibility for funds.

DINAP shall provide funds under section 302 of the Act only to Native American grantees designated in accordance with § 688.11.

§ 688.172 Allocation of funds.

(a) The Secretary shall reserve from funds available for activities under Title III of the Act an amount equal to not less than 4.5% of the amount allocated to prime sponsors pursuant to section 202(a) of the Act (sec. 302(g)). Funds shall be allocated as follows:

(1)(i) Twenty-five percent of the available funds shall be allocated on the basis of the relative number of unemployed Indians and other Native Americans within the Native American grantee's geographic service area compared to the total number of unemployed Indians and other Native Americans in the United States.

(ii) Seventy-five percent of the available funds shall be allocated on the basis of the relative number of low-income Indian and other Native American families within the Native American grantee's geographic service area compared to the total number of low-income Indian and Native American families in the United States, except that:

(2) If the factors in paragraph (a)(1) of this section result in the reduction of any area's allocation to below 90 percent of its allocation in the preceding fiscal year, DINAP shall adjust the allocations to provide each area with at least 90 percent of the preceding fiscal year's allocation provided sufficient funds are appropriated.

(b) In allocating funds, DINAP shall use whatever data are, in its opinion, the most reliable. DINAP shall notify each designated Native American grantee of the data elements used in the formula to calculate its allocation of funds. Upon request, DINAP shall also provide such information to any interested party.

(c) The allocations made to Native American grantees shall be published in the Federal Register as soon as possible after the appropriation for a fiscal year is made.

§ 688.173 Eligibility for participation in a Title III, 302 program.

(a) An Indian, Native Alaskan, or Native Hawaiian who is economically disadvantaged, or unemployed or underemployed may participate in a program under this subpart.

(b) Indians and other persons of Native American decent who meet the requirements of paragraph (a) of this section and who are identified by such terms as "landless" or "terminated" are eligible to participate. Such groups and individuals include, but are not limited to: the Klamaths in Oregon, the Lumbees in North Carolina and South Carolina, the Micmac and Maliseet in Maine, and the Eskimos and Aleuts in Alaska.

(c) A Native American grantee may enroll participants in upgrading and retraining programs who are not unemployed, underemployed or economically disadvantaged where such participants meet the following eligibility requirements:

(1) For upgrading a person must be operating at less than full skill potential, and working for at least the prior six months with the same employer in either an entry level, unskilled or semi-skilled position or a paid position with little or no advancement opportunity in a normal promotional line. Priority consideration shall be given to the workers who have been in entry level positions for the longest time.

(2) For retraining a person must have received a bona fide notice of impending layoff within the last six months and have been determined by the grantee as having little opportunity to be reemployed in the same or equivalent occupation or skill level within the labor market area.

§ 688.174 Allowable program activities.

(a) Native American grantees may undertake programs and activities consistent with the purposes of the Act including, but not limited to, programs and activities described in § 688.81 (sec. 302(f)).

(b) Native American grantees are encouraged to develop innovative means of addressing the needs of unemployed, underemployed and economically disadvantaged members of their communities and of contributing to the permanent economic self-sufficiency of such communities.

§ 688.175 Administrative costs.

Not more than 20 percent of the funds allocated to a Native American grantee under this subpart shall be used for administrative costs. Upon request of the Native American grantee, DINAP may waive this limitation when special circumstances, such as the size of the Native American grantee's service area or the limited amount of the Native American grantee's allocation, make such a waiver desirable to insure effective management control over the program.

Subpart I—Transitional Employment Programs for the Economically Disadvantaged Under Title II D

§ 688.186 Purpose.

This program is intended to provide unemployed, economically disadvantaged persons with transitional employment in jobs providing needed public services, and to provide related training and services to enable these individuals to move into unsubsidized employment or training (sec. 231).

§ 688.187 Eligibility for funds.

DINAP shall provide funds under this subpart only to Native American grantees described in section 302(c)(1)(A) of the Act (sec. 235).

§ 688.188 Allocation of funds.

(a) The Secretary shall allocate at least two percent of the funds available for Title II, Part D of the Act to eligible Native American grantees to carry out public service employment programs under this subpart (sec. 233(b)).

(b) Allocations under this subpart will be made to eligible Native American grantees on the basis of the relative number of unemployed Indians and Native Americans within each eligible Native American grantee's service area as compared to all areas eligible for funds under this subpart.

(c) For purposes of making allocations under this subpart, DINAP shall use whatever data are, in its opinion, the most reliable.

(d) DINAP shall, at its discretion, reallocate funds made available under this subpart to the extent that it determines that a Native American grantee will not be able to use such funds within the time outlined in its plan, subject to the provisions concerning reallocation of funds in § 668.52.

§ 688.189 Application for funds.

(a) In order to receive financial assistance under this subpart, a Native American grantee shall submit the following documents with the grant application described in § 688.19:

(1) Narrative Description of program;
(2) Budget Information Summary;
(3) Program Planning Summary;
(4) PSE Occupational Summary;
(5) Summary of Subrecipients and Subcontractors; and
(6) CETA Monthly Schedule.

(b) Native American grantees are required to utilize the planning process as described in § 688.17 and consider existing services and facilities which are available from Federal and other agencies (including community based organizations).

§ 688.190 Allowable activities.

(a) Funds available under this subpart shall be utilized by Native American grantees for PSE activities, projects carried out by project applicants, or for activities permitted by sec. 211 of the Act (sec. 234).

(b) In developing transitional PSE opportunities for economically disadvantaged, unemployed persons, the

following requirements shall apply. All such employment:

(1) Shall be entry level, except for employment in projects;

(2) Shall be combined with training and supportive services if such training and services are reasonably available in the area. Training and services may be offered before, during, or after the PSE to which they are related; and

(3) Shall be designed to enable participants to move into unsubsidized employment (sec. 232(a)).

§ 688.191 Participant eligibility.

(a) The following criteria shall be used by Native American grantees in determining participant eligibility for persons enrolled under this subpart. An eligible individual must be an Indian or Native American:

(1) Who has been unemployed during 15 of the 20 weeks immediately prior to application, who is unemployed at the time of application, and who is economically disadvantaged, or

(2) Who is, or whose family is, receiving public assistance (sec. 236).

(b) For purposes of participating in PSE under this subpart, an individual must reside within the Native American grantee's service area (sec. 122(a)).

(c) Notwithstanding any eligibility limitation on PSE in this part, a person who on September 30, 1978 held a PSE position under the Act may continue in such position subject to § 688.86 (sec. 122(j)).

(d) No individual shall be eligible to be employed in a PSE position, if such individual has, within 6 months immediately prior to application, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act, or the State or local minimum wage if higher (sec. 122(n)).

§ 688.192 Administrative costs.

Not more than 15 percent of the funds allocated to a Native American grantee under this subpart may be used for allowable administrative costs (sec. 232(b)(1)).

§ 688.193 Wages and wage supplementation.

(a) Wages to individuals employed in PSE under this subpart shall be paid in accordance with § 688.82(a)(3) (sec. 237(a)).

(b) No wages paid to PSE participants under this subpart may be supplemented by the payment of any additional wages for such employment from any source whatever, except as provided in § 688.82(a)(3) (sec. 237(b)).

Subpart J—Countercyclical Public Service Employment Programs Under Title VI

§ 688.200 Purpose.

This program is intended to provide temporary employment during periods of high employment (sec. 601).

§ 688.201 Eligibility for funds.

DINAP shall provide funds under this subpart only to Native American grantees described in section 302(c)(1)(A) of the Act (sec. 606(a)(2)).

§ 688.202 Allocation of funds.

(a) The Secretary shall allocate at least 2 percent of the funds available for Title VI to eligible Native American grantees to carry out public service employment programs (sec. 604(a)).

(b) Allocations under this subpart will be made to eligible Native American grantees on the basis of the relative number of unemployed Indians and Native Americans within each eligible Native American grantees's service area as compared to all areas eligible for funds under this subpart.

(c) For purposes of making allocations under this subpart, DINAP shall use whatever data are, in its opinion, the most reliable.

(d) DINAP may, at its discretion, reallocate funds made available under this subpart to the extent that it determines that a Native American grantee will not be able to use such funds within the time outlined in its plan, subject to the provisions concerning reallocation of funds in § 688.52.

§ 688.203 Application for funds.

(a) In order to receive financial assistance under this subpart, a Native American grantee shall submit the following documents with its grant application as described in § 688.19:

(1) Narrative Description of program;

(2) Budget Information Summary;

(3) Program Planning Summary;

(4) PSE Occupational Summary;

(5) Summary of Subrecipients and Subcontractors; and

(6) CETA Monthly Schedule.

(b) Native American grantees are required to utilize the planning process described in § 688.17 and consider existing services and facilities which are available from Federal and other agencies (including community-based organizations).

(c) The narrative description of the program shall include the following:

(1) A description of the extent to which the Native American grantee will supplement wages of persons other than those who were in the program on September 30, 1978;

(2) The total amount of funds used to supplement jobs funded under this subpart for persons other then those who were in the program on September 30, 1978; and

(3) The maximum amount of funds used to supplement any job held by a person other than one who was in the program on September 30, 1978.

§ 688.204 Allowable activities.

(a) Native American grantees may use funds received under this subpart for public service jobs in projects. Public service jobs in projects are not limited to entry level positions (sec. 605(a)). To the extent feasible, all public service jobs shall be provided in occupational fields which are most likely to expand (sec. 122(m)).

(b) In addition to providing public service employment in projects, Native American grantees may utilize funds for entry-level PSE not in such projects, in accordance with § 688.205.

(c) Activities other than PSE, including those described in § 688.81, may be carried out under this subpart (sec. 610).

§ 688.205 Financial limitations.

(a) The following cost restrictions shall apply only to the funds utilized by Native American grantees for project and non-project PSE:

(1) At least 80 percent of such funds shall be expended for wages and fringe benefits (sec. 603(a)); and

(2) Not more than 15 percent of the funds allocated to a Native American grantee may be used for administrative costs.

(b) When funds are used for non-PSE activities such as those described in § 688.81, not more than 20 percent of such funds may be used for administrative costs.

§ 688.206 Participant eligibility.

(a) To participate an individual must be an Indian or Native American who resides within the Native American grantee's service area and:

(1)(i) Who is unemployed at the time of application and who has been unemployed for at least 10 out of the 12 weeks immediately prior to application; and

(ii) Whose family income does not exceed 100 percent of the lower living standard income level based on the annualization of family income during the three-month period prior to the person's application for participation; or

(2) Whose family has been receiving public assistance for 10 of the last 12 weeks (sec. 607).

(b) The provisions of § 688.191(d) shall apply with respect to the eligibility of persons who voluntarily terminated their last employment (sec. 122(n)).

(c) The provisions of § 688.191(c) shall apply with respect to eligibility for participation under this subpart.

§ 688.207 Wages and wage supplementation.

(a) Wages paid to public service employment participants and the supplementation of such wages shall be in accordance with § 688.82-1(c) (sec. 608).

(b) Wages paid to public service employees hired on or after January 26, 1979, may be supplemented by additional wages from non-CETA sources only if:

(1) The total amount of funds used in any fiscal year to provide such supplemented wages does not exceed an amount equal to 10 percent of the Native American grantee's Title VI allocation for such fiscal year; and

(2) The wage supplementation to any public service employee does not exceed:

(i) Ten percent of the maximum wage applicable for the Native American grantee's area; or

(ii) Twenty percent of the maximum wage applicable for the Native American grantee's area in any area where the average wage (during the period for which the most recent data is available) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 125 percent, but does not exceed 150 percent, of the national average wage in such employment.

(c) Any public service employee hired between September 30, 1978, and January 26, 1979, receiving wages supplemented from non-CETA sources may continue to receive such wages after January 26, 1979, only if such supplementation is in accordance with the provisions of paragraph (b) of this section.

(d) Any PSE participant who on September 30, 1978, was receiving wages from non-CETA sources may continue to receive such wages, so long as the person remains in the same position or a PSE position with the same or lower wage rate. These wages are not subject to the limitations of, nor shall they be counted in determining compliance with, paragraph (b) of this section. However, the non-CETA portion shall not be reduced if the maximum wage has been adjusted above $10,000 after September 30, 1978, until the incumbent participant leaves this position or until the next Native American grantee budgetary cycle, whichever comes earlier (sec. 122(i)(4)(B)).

(e) Any CETA participant who was receiving only CETA wages on September 30, 1978, at a rate less than $10,000 per year may have such wages supplemented above the $10,000 rate from non-CETA sources after September 30, 1978, if such increase is the result of a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position. These wages are not subject to the limitations of, nor shall they be counted in determining compliance with, paragraph (b) of this section.

(f) When a PSE participant, hired after September 30, 1978, is eligible for promotion, a general salary increase or overtime pay, the employer shall pay from non-CETA funds that amount in excess of the maximum amount payable from CETA funds as well as a pro-rata share of the increased fringe benefits, unless such payments would be in violation of the limitations on public service wage supplementation contained in paragraph (b) of this section. If such payment would be in violation, then the participants affected must be transferred to other positions or be terminated.

Subpart K—Youth Community Conservation and Improvement Projects for Indian and Native American Youth

§ 688.215 General.

(a) This subpart contains the Department of Labor's regulations governing the establishment and operation of Indian and Native American Youth Community Conservation and Improvement Projects (YCCIP) under Title IV, Part A, Subpart 2, of the Act.

(b) This program seeks to provide youth experiencing severe difficulties in obtaining employment with well-supervised work in projects that produce tangible benefits to the community. Supervision shall be provided by competent supervisors who can instill good work habits in the youth. The program emphasizes the development and provision of jobs. Any training must be directly related to the development of specific skills needed for a job. The program must be flexible enough to accommodate in-school youth, and they should be encouraged to stay in school and graduate. Participants who have not graduated from high school should be encouraged to finish their education.

§ 688.216 Eligibility for and allocation of funds.

(a) Only Native American grantees described in Sec. 302(c)(1) of the Act are eligible for YCCIP funds.

(b) Allocation of funds.

(1) Two percent of the funds available for YCCIP shall be made available for projects for eligible Indian and Native American youth operated by Native American grantees (sec. 423(b)).

(2) Funds shall be allocated to Native American grantees eligible under this subpart on the basis of the relative number of unemployed persons within each such grantee's area as compared to the number in all such Native American grantee areas.

§ 688.217 Native American grantees planning procedures and submission of applications.

(a) *Planning.* When planning a YCCIP program, Native American grantees shall utilize the planning process described in § 688.17.

(b) *Grant application.* In order to receive financial assistance under this subpart, a Native American grantee must submit the following documents with its grant application described in § 688.19:

(1) YCCIP Narrative;

(2) Program Planning Summary; and

(3) Budget Information Summary.

(c) *Content of YCCIP Narrative.* The narrative shall include information regarding:

(1) The types of jobs;

(2) The need for the types of work to be performed;

(3) The full-time supervisor to youth ratio;

(4) Qualifications of supervisors;

(5) Benefits participants are expected to derive;

(6) Principal job titles, brief job descriptions and hourly wages;

(7) Target groups to be served;

(8) Recruiting methods;

(9) Supportive services to be provided; and

(10) The following costs:

(i) Participant wages and benefits;

(ii) Work-site supervisors wages and benefits;

(iii) Job-related training; and

(iv) Materials, supplies and equipment used by participants on the job.

§ 688.218 Project application approval.

To be approved a proposed YCCIP program must, in addition to the requirements of § 688.22:

(a) Provide benefits to the community as determined by representatives of the communities and groups served. No application shall be disapproved because of the goals of the community and priorities ascribed thereto;

(b) Provide benefits to participants in terms of work habits, skills, and attainment of academic credit where applicable;

(c) Assure an adequate level of supervision, taking into account the complexity of the jobs to be created; and

(d) Describe qualifications of supervisors in terms of skills and experience.

§ 688.219 Eligibility for participation.

(a) In order to participate, an individual must at the time of enrollment:

(1) Be an Indian or Native American youth 16 through 19 years of age, inclusive; and

(2) Be unemployed (sec. 422(3)).

(b) If at the time of application for enrollment into any other program under the Act, a youth, who is currently 16 through 19 years of age, was unemployed, the youth may be transferred into YCCIP.

(c) Appropriate efforts shall be made to serve those youth who have severe difficulties in obtaining employment.

§ 688.220 Acceptable project activities.

(a) Projects shall insure that participants do constructive work in terms of individual and community benefits. Such employment may include, but is not limited to, the rehabilitation, construction, or improvement of public facilities (including making them accessible for the handicapped by removing architectural barriers); neighborhood improvements; weatherization and basic repairs to low income housing; energy conservation, including solar energy projects; and conservation, maintenance, or restoration of natural resources of publicly held lands, including lands held in trust for the benefit of Indian tribes, bands or groups or other land owned by Indian or Native American groups, but excluding land owned by the Federal government.

(b) Where in-school youth are served, they must be in a combination of work and education programs.

(c) Public service employment (PSE) projects are not permitted.

(d) Funds provided under this subpart shall not be used to support make-work projects.

§ 688.221 Academic credit.

Native American grantees may make appropriate efforts to encourage educational agencies to award academic credit for the competencies participants gain from their employment.

§ 688.222 Supervisory personnel.

(a) Each project shall have an adequate number of skilled supervisors. Unless justification to the contrary is provided in the plan, there shall be at least the equivalent of one full-time supervisor to every 12 youth. Supervisors must have the skills needed to carry out the project and must be able to instruct participants in those skills.

(b) The hiring of supervisory personnel for projects shall not impede the promotional rights of existing employees.

§ 688.223 Materials, equipment and supplies.

Native American grantees are encouraged to make use of resources from CETA, BIA, Community Service Administration, the U.S. Department of Energy and other agencies to provide or supplement materials, equipment, and supplies.

§ 688.224 Earnings disregard.

Earnings and allowances received by any youth under this subpart shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program (sec. 446).

§ 688.225 Limitation on use of funds.

No less than 65 percent of the funds awarded to each Native American grantee may be used for participants' wages and fringe benefits. No more than 20 percent may be spent on administrative costs. Allowances may not be paid under YCCIP.

§ 688.226 Work limitation.

No youth shall be employed for more than 12 months in work financed under this subpart (sec. 421).

§ 688.227 Participants' wages.

The provisions of § 688.239 concerning wages paid to participants shall apply to programs under this subpart.

§ 688.228 Reallocation of funds.

Funds may be reallocated as described in § 688.52.

Subpart L—Youth Employment and Training Program

§ 688.231 General.

(a) This subpart contains the regulations for Indian and Native American Youth Employment and Training Programs (YETP) which are authorized by Title IV, Part A, Subpart 3 of the Act.

(b) The purpose of this program is to enhance the job prospects and career opportunities of Indian and Native American youth, including employment, community service opportunities, and such training and supportive services as are necessary, to enable them to secure suitable and appropriate unsubsidized employment in the private and public sectors of the economy. It is not the purpose of this program to provide make-work activities, but rather to provide youth with the opportunities to learn and earn, which will lead to meaningful employment opportunities after they have completed the program (sec. 431).

§ 688.232 Eligibility for and allocation of funds.

(a) Only Native American grantees described in sec. 302(c)(1) of the Act are eligible for YETP funds.

(b) Allocation of funds.

(1) Not less than two percent of the funds available for programs under Part A of Title IV of the Act, less the amount of funds allocated for Indian and Native American YCCIP programs under § 688.216 shall be made available for YETP programs for eligible Indian and Native American youth operated by eligible Native American grantees (sec. 433(a)(3)).

(2) Funds shall be allocated to Native American grantees eligible under this subpart on the basis of the relative number of unemployed persons within each such grantee's area as compared to the number in all such Native American grantee areas.

§ 688.233 Reallocation of funds.

Funds may be reallocated as described in § 688.52.

§ 688.234 Native American Grantee planning process and submission of applications.

(a) Native American grantees must plan their youth programs taking into account their plans for youth in all of their CETA programs.

(b) For purposes of this subpart, the term planning council shall mean a council formed pursuant to § 688.17 or, in the absence of such a body, the governing body of the Native American grantee.

(c) Each Native American grantee whose combined YCCIP and YETP allocations exceed $150,000 shall establish a youth council.

(1) The Native American grantee shall make appointments to the youth council which include individuals who are representative of the local educational agencies, the local vocational advisory council, post-secondary education institutions, business, unions, the public employment service, local governments and nongovernment agencies and organizations which are involved in meeting the special needs of youth, the community served by the Native American grantee and the Native

American grantee. In addition, youth council members shall include youth who are participants in, or eligible for, YETP (sec. 436(b)).

(2) The youth council may be either an entirely separate council or a subcommittee or subcouncil to any Native American grantee's planning council, or a Native American grantee may use existing youth councils created with respect to other programs under the Act or other Acts or programs if these councils meet the requirements set forth in this section.

(3) The youth council shall at a minimum make recommendations to the Native American grantee with respect to the planning and review of all program activities conducted under YETP or YCCIP and shall review the proposed agreements with local educational agencies under YETP (sec. 436 (b) and (c).

(d) To receive financial assistance, a Native American grantee must submit the following documents with its grant application described in § 688.19:

(1) YETP Narrative;

(2) Program Planning Summary;

(3) Budget Information Summary; and

(4) Summary of Subrecipients and Contractors.

(e) The narrative section of the YETP proposal shall cover the following:

(1) Objectives of the program;

(2) Local priorities;

(3) Implementation planning;

(4) Program activities and services;

(5) Management and administration;

(6) Results and benefits expected from the program;

(7) How the program will:

(i) Develop long-term and coordinated solutions to the employment problems of youth, especially the economically disadvantaged;

(ii) Enhance job prospects and career opportunities for youth; and

(iii) Enable participants to secure appropriate unsubsidized employment.

(8) That identified performance goals are reasonable and can be achieved;

(9) That a youth council has been established (if required) and has participated in the planning and review process for the youth plan; and

(10) That any in-school program will operate pursuant to § 688.238.

§ 688.235 Allowable costs.

Allowable costs are the same as those under § 688.43. Costs for administration are limited to 20 percent of the allocation.

§ 688.236 Eligibility for participation.

(a) Every participant at the time of application, must be:

(1) An Indian or Native American youth;

(2) Unemployed, or underemployed, or an in-school youth;

(3) Fourteen through 21 years of age; and

(4)(i) A member of a family with total family income, annualized on a six month basis, at or below 85 percent of the lower living standard income level; or

(ii) Economically disadvantaged.

(b) For the purpose of participating in in-school work experience, the youth must need such participation in order to improve his or her ability to make career decisions and to provide him or her with basic work skills needed for regular employment or self-employment not subsidized under this program (sec. 436(c)).

(c) Youth need not meet the income criteria described in § 688.236(a)(4)(i), nor need they be economically disadvantaged, if they participate in a special component as described in § 688.237(e) (sec. 435).

(d) Youth who do not meet the income or economically disadvantaged criteria described in § 688.236(a)(4) and who are not in the special component described in § 688.237(e) may not be offered OJT, work experience or training opportunities, but may be offered the following employment related services:

(1) Counseling, including occupational information;

(2) Occupational education and training information, including information on apprenticeship training;

(3) Placement services;

(4) Job referral information; and

(5) Assistance in overcoming employment related sex stereotyping in job development, placement, counseling and guidance.

§ 688.237 Allowable activities and services.

(a) Programs may include any type of employment and training activity or service, including (sec. 432(a)):

(1) Useful work experience opportunities in community betterment activities such as rehabilitation of public properties, assistance in the weatherization of homes occupied by low-income families, demonstrations of energy-conserving measures, park establishment and upgrading, neighborhood revitalization, conservation and improvements, and removal of architectural barriers to access by handicapped individuals;

(2) Productive work experience in fields such as education, health care, neighborhood transportation services, crime prevention and control, environmental quality control (including integrated pest management activities), preservation of historic sites, and maintenance of visitor facilities;

(3) Appropriate training and services, including:

(i) Outreach, assessment, and orientation;

(ii) Counseling, including occupational information and career counseling;

(iii) Activities promoting education to work transition;

(iv) Development of information concerning the labor market, and provision of occupational, education, and training information;

(v) Services to youth to help them obtain and retain employment;

(vi) Literacy training and bilingual training;

(vii) Attainment of certificates of high school equivalency;

(viii) Job sampling, including vocational exploration in the public and private sector;

(ix) Institutional and on-the-job training, including development of basic skills and job skills;

(x) Transportation assistance;

(xi) Child care and other necessary supportive services;

(xii) Job restructuring to make jobs more responsive to the objectives of this subpart, including assistance to employers in developing job ladders or new job opportunities for youths, in order to improve work relationships between employers and youths;

(xiii) Community-based central intake and information services for youth;

(xiv) Job development, direct placement, and placement assistance to secure unsubsidized employment opportunities for youth to the maximum extent feasible, and referral to employability development programs;

(xv) Programs to overcome sex-stereotyping in job development and placement; and

(xvi) Programs and outreach mechanisms to increase the labor force participation rate among minorities and women.

(b) Each participant in on-the-job training, work experience, or career employment experience shall be assured of the general benefits and working conditions for program participants provided in § 688.83.

(c) No youth may enroll in a full-time employment opportunity if he or she has dropped out of high school in order to participate (sec. 443(f)).

(d) A written job description shall be developed and maintained for all work experience and OJT positions to provide a basis for determining its comparability to jobs of individuals similarly employed.

(e) A Native American grantee may design a special component using up to

10 percent of its YETP funds to serve a mixture of youth from families above and below the income level specified in § 688.236(a)(4)(i) and who are economically disadvantaged and non-economically disadvantaged to test the desirability of serving such a mix of youth (sec. 435).

§ 688.238 In-school programs.

(a) *Activities and services.* An in-school program may provide for:

(1) Transition services designed to assist youth to move from school to unsubsidized jobs; and

(2) Career employment experience. This activity is a combination of well-supervised employment (work experience or on-the-job training) and certain transition services including at a minimum, career information, counseling and guidance. Where work experience or on-the-job training is provided for in-school youth under agreements with local educational agencies, placement services must also be included.

(b) *Agreement with local educational agencies.* (1) Native American grantees serving in-school youth are encouraged to design programs to enhance their career opportunities and job prospects pursuant to written agreements between Native American grantees and local educational agencies (LEA's).

(2) Agreements may be between the Native American grantee and one or more LEA's, or a combination of LEA's represented by one LEA.

(3) Each agreement may be either financial or nonfinancial, whichever is determined most appropriate by the Native American grantee and the LEA(s) and shall:

(i) Provide a description of the activities and services to be provided to participants; and

(ii) Detail the responsibility of each party to the agreement for providing the activities and services.

(4) Additional provisions are required in those agreements which provide for career employment experience opportunities. These include:

(i) Assurances that youth will be provided constructive work experience, which will improve their ability to make career decisions and provide them with basic work skills needed for regular employment or self-employment not subsidized under this in-school program.

(ii) Assurances that such agreements have been reviewed by the youth council (if required).

(iii) Assurances that job information, counseling, guidance, and placement services will be made available;

(iv) Assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the youths;

(v) Assurances that the Native American grantee will advise youth of the availability of other employment and training resources available in the local community; and

(vi) an assurance that career employment experience opportunities provided will be certified by a local education agency counselor as being an appropriate component of the overall educational program of each youth.

§ 688.239 Participants' wages.

Participants receiving wages shall be paid no less than the highest of (sec. 442):

(a) The minimum wage under sec. 6(a)(1) of the Fair Labor Standards Act, but in the case of an individual who is 14 or 15 years old, the wage provided in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act;

(b) The State or local minimum wage for the most nearly comparable employment, but in the case of an individual who is 14 or 15 years old the wage provided in accordance with the applicable provision of the applicable State or local minimum wage law; or

(c) The prevailing rates of pay, if any, for occupations and job classifications of individuals employed by the same employer.

§ 688.240 Maintenance of effort.

The provisions of § 688.127 proscribing substitution of Federal funds for activities previously funded through other resources apply to this program.

§ 688.241 Earnings disregard.

Wages and allowances received by any youth under YETP shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally-assisted program (sec. 446).

§ 688.242 Labor organizations' comments.

Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under the program for which an application is being developed for submission, such organization shall be notified and shall be afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and DINAP (sec. 443(d)).

§ 688.243 Discretionary projects.

Native American grantees are eligible for, and may make application to, the Secretary of Labor to operate innovative and experimental programs to test new approaches for dealing with the unemployment problems of youth and to enable eligible participants to prepare for, enhance their prospects for, or secure employment in occupations through which they may reasonably be expected to achieve productive working lives.

§ 688.244 Eligibility for demonstration programs.

Native American grantees are eligible, if selected by the Secretary, to carry out youth employment incentive and social bonus demonstration programs authorized under sec. 439 of the Act.

Subpart M—Summer Youth Employment Program

§ 688.250 General.

This subpart contains the policies, rules, and regulations of the Department in implementing and administering a Summer Youth Employment Program for Indians and other Native Americans authorized by Title IV, Part C of the Act.

§ 688.251 Eligibility for funds under the summer youth program.

Only Native American grantees described in sec. 302(c)(1) of the Act are eligible for summer youth program funds.

§ 688.252 Allocation of funds.

Allocations shall be made to Native American grantees on the basis of the relative number of unemployed persons within each Native American grantee's service area as compared to the number in all such Native American grantee areas.

§ 688.253 Special operating provisions.

Native American grantees shall:

(a) Provide services to youths most in need;

(b) Develop outreach and recruitment techniques aimed at all segments of the economically disadvantaged youth population, especially school dropouts, youth not likely to return to school without assistance from the summer program, and youth who remain in school but are likely to be confronted with significant employment barriers relating to work attitude, aptitude, social adjustment, and other such factors;

(c) Provide labor market orientation to all participants. This orientation may include, as appropriate; vocational exposure, counseling, testing, resume preparation, job interview preparation, providing labor market information, providing information about other training programs available in the area, including apprenticeship programs, and similar activities. It may be provided on

a group or individual basis. In providing labor market orientation, skill training and remedial education, each grantee shall make maximum efforts to develop cooperative relationships with other community resources so that these activities are provided in the summer program at no cost, or at minimum cost, to the summer program;

(d) Ensure that adequate supervision from skilled supervisors is provided to participants at each worksite;

(e) Make appropriate efforts to encourage educational agencies and post-secondary institutions to award academic credit for the competencies participants gain from their participation in the summer program;

(f) Ensure that appropriate efforts are made to closely monitor the performance of the summer program and measure program results against established goals;

(g) Ensure that enrollee applications are widely available and that jobs are awarded among individuals most severely disadvantaged in an equitable fashion. Enrollment applications shall require the signature of the applicant or (in the case of minors) the parent or guardian attesting to the accuracy of the information, including income data, provided on the application; and

(h) Provide participants with an orientation to the program which shall include, but not be limited to: purposes of the program, the conditions and standards (including such items as hours of work, pay provisions and complaint procedures) for such activities in the program.

§ 688.254 Startup of program.

During the planning and design phase of the program and prior to the close of the school year, only those activities outlined in § 688.255(b) are permissible. These activities shall be charged as administrative costs. Individuals may not begin participation in the program before the close of school.

§ 688.255 Program planning; planning and youth councils.

(a)(1) In developing the summer program, the Native American grantee shall coordinate the summer plan with its Title III, YETP, and YCCIP programs.

(2) Native American grantees shall use the planning process described in § 688.17.

(b) The following planning and design activities shall be allowable beginning October 1 of each year:

(1) Hiring of staff (planners, worksite developers, intake specialists, etc); provided, prior to the close of school all staff salaries and benefits shall be charged as administrative expenses;

(2) Development of the summer plan;

(3) Worksite development;

(4) Recruitment, intake and selection of participants;

(5) Arrangements for supportive services;

(6) Dissemination of program information;

(7) Development of coordination between schools and other services;

(8) Staff training; and

(9) Other activities that may be characterized as planning and design but not program operation.

(c) Expenses incurred in such planning and design activities may, pursuant to §§ 688.44 and 688.45, be paid from administrative funds received under other titles of the Act.

§ 688.256 Submission of applications.

(a) DINAP shall promptly notify Native American grantees of their allocation of summer youth program funds. When Native American grantees are informed of their summer funding level by DINAP, they shall submit modifications of their grants to DINAP consisting of the following documentation:

(1) Grant Signature Sheet;

(2) Program Narrative Description;

(3) Program Planning Summary;

(4) Budget Information Summary; and

(5) Summary of Subrecipients and Contractors.

(b) The narrative description shall cover:

(1) Objectives and needs for assistance. This shall include a discussion of the program's purpose in terms of the types of activities and services that will be provided to youth during the summer

(2) Results and benefits expected. This shall include a discussion of:

(i) Specific quantifiable performance goals by program activity; and

(ii) Enrollment of participants in the various program activities and the projected program results; and

(3) A property list including quantity and prices of items of capital equipment to be purchased which have a unit cost greater than $1,000.

§ 688.257 Eligibility for participation.

(a) An individual shall be eligible for participation if at time of application he or she is an Indian or Native American youth who is:

(1) At the time of application, economically disadvantaged; and

(2) At the time of enrollment, age 14 to 21 inclusive.

(b) The nepotism provisions of § 688.120 shall not apply to this program.

§ 688.258 Allowable activities.

Allowable activities are those listed in § 688.81 except that public service employment is not permitted.

§ 688.259 Vocational exploration program.

A Native American grantee may conduct a vocational exploration program for the purpose of exposing youth to the operation and types of jobs and instruction including, where appropriate, limited and short term practical experience.

§ 688.260 Worksite standards.

(a)(1) Each Native American grantee shall develop a written agreement with each worksite employer which assures:

(i) Adequate supervision of each participant;

(ii) Adequate accountability for participant time and attendance; and

(iii) Adherence to the rules and regulations governing the Summer Program.

(2) Such written agreements may be memoranda of understanding, simple work statements or other documents which indicate an estimate of the number of participants at the worksite and any operational conditions governing the program at the worksite.

(b) Each Native American grantee shall establish procedures for the monitoring and evaluation of each worksite to insure compliance with the worksite agreements and the terms and conditions of subgrants and contracts.

(c) No participant shall be required to work, or be compensated for work with CETA funds, for more than 40 hours of work per week. While the Department uses a 9-week, 25-hour per week job as the basis for estimating the number of youth to be served, this is not intended to take away the flexibility of the Native American grantee to establish job slots in keeping with the needs of the area and the youth to be served.

§ 688.261 Reporting requirements.

(a) Each Native American grantee shall submit the following reports to DINAP:

(1) A Youth Program Status Summary, as of September 30;

(2) Two Youth Financial Status Reports, as of September 30 and December 31; and

(3) Quarterly Summary of Youth Characteristics Report, as of September 30;

(b) The reports in this section shall be submitted to DINAP no later than 30 days after the end of the report period.

§ 688.262 Termination date for the summer program.

Participants may not be enrolled in the summer program beyond September

30, or beyond the date they resume school full-time, whichever occurs earlier. Allowable activities after September 30 include report and record preparation and submittal, completion of evaluations and assessments of worksite employers and the overall program or other elements of the summer program, and audits.

§ 688.263 Discretionary funds.

The Secretary shall give priority to previously funded summer youth programs of demonstrated effectiveness in the award of discretionary summer youth funds, such as, but not limited to, the Lumbees of North Carolina.

§ 688.264 Administrative costs.

Costs for administration of the summer program are limited to 20 percent of the funds allocated to the Native American grantee. Upon request of the Native American grantee, the Director may waive this limitation when special circumstances, such as the size of the grantee's service area or the limited amount of the grantee's allocation, make such a waiver desirable to insure effective management control over the program.

Subpart N—Indian and Native American Private Sector Initiative Program

§ 688.270 Scope and purpose.

This subpart contains the regulations for the Indian and Native American Private Sector Initiative Program under Title VII of the Act.

(a) Title VII of the Act is a demonstration title. It authorizes a variety of approaches to increase the involvement of the business community in employment and training activities under the Act.

(b) Title VII is designed to increase private sector employment and training opportunities for Indian and Native American persons eligible under this subpart.

(c) As a primary vehicle to assist Native American grantees in meeting these goals, Title VII provides for the establishment of Private Industry Councils (PIC's) which are to participate with the Native American grantee in the local development and implementation of programs under this subpart, and to consult with the Native American grantee on other employment and training activities.

(d) The goal of Title VII is to increase private sector employment and training opportunities under all Titles of the Act.

(e) An important thrust of the Act is to provide for maximum feasible coordination of programs under the Act with related functions supported by the Department and by other Federal, tribal and other Native American agencies. Accordingly, Native American grantees and PIC's are encouraged to work together with agencies involved in planning and operating programs funded by, or administered through, the Economic Development Administration, Small Business Administration, Community Services Administration, Department of Housing and Urban Development, Department of the Interior (including the Bureau of Indian Affairs), Department of Health, Education, and Welfare (including the Indian Health Service) and Department of Agriculture, among others, in order to increase the effectiveness of programs under this subpart and under the Act in securing employment for economically disadvantaged persons (sec. 701).

§ 688.271 Private Industry Councils (PIC's).

(a)(1) To receive financial assistance under this subpart, each Native American grantee shall establish a Private Industry Council (PIC). Its purpose shall be to increase the involvement of the business community, including tribally owned enterprises and ventures owned by native Alaskan regional and village corporations, small business, minority business enterprises and labor organizations, in employment and training activities under the Act, and to increase private sector employment opportunities for economically disadvantaged persons (secs. 701, 702(b) and 704(a)).

(2) Given the diversity of local circumstances and the differing environments in which PIC's will operate, the structure, level of activity, and composition of PIC's may vary considerably from one Native American grantee's jurisdiction to another. Title VII of the Act is designed to encourage the formulation of a local partnership between the private sector and the Native American grantee that will most effectively satisfy the labor demand needs of the business community and enhance the economic well-being of the Native American community.

(b)(1) Each Native American grantee shall appoint the members of the PIC (sec. 704). A majority of the PIC membership should be representatives of industry and business (sec. 704(a)). Where appropriate, this shall include representatives of tribally owned enterprises and ventures owned by native Alaskan regional and village corporations. The PIC should also include representatives of organized labor.

(2) Ultimate decisions regarding the PIC rest with the Native American grantee. In making major decisions, the Native American grantee shall solicit and consider the recommendations of the business and industrial community (sec. 704(a)).

(3) Existing local councils or committees may be designated or adapted to serve as the PIC (sec. 704(a)).

(4) In establishing a PIC, the Native American grantee should consult with business and industry, labor organizations, community-based organizations, educational agencies and institutions, the apprenticeship community, and existing councils and committees where such agencies exist.

(5) Native American grantees may also appoint to the PIC other members from organizations such as:

(i) Community-based organizations, educational agencies, and persons eligible to participate in activities under this subpart (sec. 704(a)(1));

(ii) Tribal Employment Rights Offices (TEROs), where such exist; and

(iii) Tribal government and tribal or other Native American agencies actively engaged in economic development activities.

(6) The chairperson of the PIC shall be appointed by the Native American grantee.

(7) The activities of the PIC shall be coordinated by the Native American grantee with those of the Native American grantee's planning council, where such a council exists. The planning council, or governing body where no planning council has been established, shall review and comment on the Title VII plan, and otherwise operate with respect to the Title VII program in the same manner as with other programs.

(c) The PIC may be staffed commensurate with its responsibilities and the level of administrative funding available to the Native American grantee. The arrangements with respect to staff and staff support shall be determined by the Native American grantee, after consultation with the PIC.

(d) The Native American grantee, in consultation with the PIC, shall determine those functions that the PIC will perform. Those functions should include the following:

(1) The PIC should be a primary vehicle of the Native American grantee for directing employment and training activities under the Act to permanent unsubsidized positions in the private sector.

(2) The PIC should serve as the business and industry contact point in the Native American grantee's employment and training system, to

present the private sector's views and recommendations for making programs more responsive to local employment needs.

(3) The PIC should advise the Native American grantee's employment and training system on ways to increase private sector job placements (secs. 701 and 704(c)).

(4) The PIC should, in conjunction with the Native American grantee, design and develop the Title VII program and the application for Title VII funds (sec. 704(c)).

(5) In designing the Title VII plan, and on a continuing basis, the PIC should analyze private sector job opportunities, including estimates by occupation, industry and location. The analysis should survey employment demands in the private sector and training possibilities, such as apprenticeship, in order to develop projections of short and long range labor needs, and to refine employment and training programing so that it becomes increasingly responsive to private sector labor needs. In undertaking this analysis, the PIC should assess and use information contained in economic development plans for the area and currently available labor market information from sources already in place, such as Tribal Employment Rights Offices (TEROs).

(6) The PIC should, in conjunction with the Native American grantee, develop specific private sector employment and training projects.

(7) The PIC should, in conjunction with the Native American grantee, develop standards for the types of occupations to be selected for the expenditure of training funds.

(8) The PIC should, in conjunction with the Native American grantee, develop standards and specifications for training in particular occupations.

(9) In designing the plan, the PIC and Native American grantee should, to the extent possible, ensure that the plan is consistent with plans, funding applications and grants for programs related to private sector employment and training which are funded by other Federal agencies.

(10) The PIC should have the opportunity to review and comment on the Native American grantee's application(s) for funds for other programs under the Act (sec. 704(c)).

(11) The PIC should actively solicit public and private support for and participation in the Indian and Native American Private Sector Initiative Program and other programs and activities designed to increase private sector employment and training opportunities.

(12) The PIC should market and disseminate information on the Targeted Jobs Tax Credit, created by the Revenue Act of 1978 (Pub. L. 95-600), and the WIN tax credit.

(e) Nothing in this section shall be construed as authorizing activity by a PIC in violation of tribal law, ordinance or regulations.

§ 688.272 Eligibility for funds.

DINAP shall provide funds under Title VII of the Act only to Native American grantees described in section 302(c)(1)(A) and (B) of the Act and designated in accordance with § 688.11. No less than two percent of the total funds available under Title VII of the Act shall be allocated for purposes of this subpart.

§ 688.273 Distribution of funds.

(a) All grant awards shall be on a competitive basis. DINAP will issue a Solicitation for Grant Applications (SGA) which will describe the content of the application, timeframe for funding and criteria to be used in the evaluation of grant applications and award of grants. The amount of funds available will be indicated in the SGA whenever such amount is known.

(b) To be eligible to respond to the SGA, a Native American grantee must be in substantial and timely compliance with regulations pertaining to other programs it conducts under the Act.

§ 688.274 Grant procedures.

(a) The Title VII plan submitted by a Native American grantee shall contain the information and forms specified in the Solicitation for Grant Applications (SGA) issued by DINAP. The deadline for submission of such plans shall be set in the SGA.

(b) The Native American grantee shall transmit a copy of its Title VII plan to the planning council, if any, to appropriate labor organizations, community-based organizations, educational agencies and institutions, Overall Economic Development Program committees and Tribal Employment Rights Offices (TEROs), if any. The comment and publication procedures of § 688.21 apply to plans submitted under this subpart (sec. 703(b)(4) and (5)).

(c) The Title VII plan shall have the concurrence of both the PIC and the Native American grantee in order to be approved. Therefore, the PIC chairperson as well as the Native American grantee shall sign the plan.

§ 688.275 Administrative standards and procedures.

(a) The total amount of administrative costs incurred by a Native American grantee shall not exceed 30 percent of the grant.

(b) Payments to private-for-profit employers through methods not specifically authorized under subparts D and E of this Part shall not be allowable unless the method of payment is explained in advance and authorization for its use is specifically granted in writing by DINAP. DINAP shall make a final decision on such requests within 60 days after such a request has been submitted by a Native American grantee. Nothing in this paragraph authorizes using CETA funds for paying wages in the private sector (sec. 703(c)).

§ 688.276 Program operations.

(a) *Eligibility.* With the exception described in the subsequent provisions of this paragraph, participants shall be Indian or Native American persons who are economically disadvantaged and unemployed or underemployed. However, a Native American grantee may enroll participants in Title VII activities who are unemployed or underemployed and not economically disadvantaged where such participants require skill training, on-the-job training and/or special services to qualify them for private sector positions involving specialized technical, managerial or supervisorial responsibilities. Unless otherwise permitted by DINAP, not more than 10 percent of the participants or 10 percent of the funds awarded under this subpart, whichever results in the greater expenditure of funds, may be non-economically disadvantaged or involve training and services for non-economically disadvantaged participants.

(b) *Allowable activities.* Funds shall be used to provide employment and training and related activities consistent with the purposes of Title VII including:

(1) Activities authorized in subpart H of this part;

(2) Coordinating programs of jobs and training with education to enable individuals to work for a private employer while attending an education or training program;

(3) Developing a small business intern program to provide practical training enabling youths and other individuals to work in small business firms to acquire first-hand knowledge and management experience about small business;

(4) Developing relationships between employment and training programs, educational institutions, and the private sector;

(5) Developing useful methods for collecting information about Federal Government procurement contracts with private employers, new and planned publicly-supported projects such as public works, economic development and community development programs,

transportation revitalization, alternative energy technology development, demonstration and utilization projects, energy conservation projects, and rehabilitation of low income housing as part of a community revitalization or stabilization effort, which provides work through private sector contractors;

(6) Conducting innovative cooperative education programs for youths in secondary and postsecondary schools designed to coordinate educational programs with work in the private sector;

(7) Developing and marketing model contracts designed to reduce the administrative burden on the employer and model contracts to meet the needs of specific occupations and industries;

(8) Coordinating programs under this subpart with other job development, placement, and employment and training activities carried out by public and private agencies;

(9) Making on-the-job training payments on a declining ratio to wages over the period of training;

(10) Providing followup services to participants placed in private employment;

(11) Encouraging employers to develop job skill requirement forecasts and to coordinate such forecasts with Native American grantees;

(12) Using direct contracts for training and employment programs with private-for-profit organizations;

(13) Developing apprenticeship or comparable high-skill training programs for workers regardless of age in occupations where such programs do not exist presently in the area;

(14) Increasing opportunities for upgrading from entry level jobs by providing counseling and other services to employees beyond initial training periods;

(15) Providing technical assistance to private employers to reduce the administrative burden of employment and training programs;

(16) Disseminating information to private employers so that they may more fully use programs under the Act; and

(17) Other program activities which demonstrate effective approaches to training and employment (sec. 705(a)).

Signed at Washington, D.C., this 1st day of November 1979.

Ray Marshall,

Secretary of Labor.

Appendix—Alphabetical Index

Appendix—Alphabetical Index—Continued

Appendix—Alphabetical Index—Continued

Appendix—Alphabetical Index—Continued

[FR Doc. 79-34295 Filed 11-5-79; 8:45 am]

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Part XII

Department of Labor

Office of the Secretary

Decisions of the Secretary of Labor and Annual Certifications Under the Federal Unemployment Tax Act

DEPARTMENT OF LABOR

Office of the Secretary

Decisions of the Secretary of Labor and Annual Certifications Under the Federal Unemployment Tax Act

Certifications are made annually on October 31 under sections 3303 and 3304 of the Internal Revenue Code of 1954, for the purposes of the tax credits allowable against the federal unemployment tax. Such certifications are not made with respect to a State, however, if the Secretary of Labor finds, in accordance with section 3304(c) of the Code, that the State unemployment compensation law is not in conformity with the requirements specified in section 3304(a) of the Code, or that the State has failed to comply substantially with any of those requirements. The withholding of certifications with respect to a State do not take effect until 60 days after the governor of the State is notified of the Secretary's decision, and thereafter until all stays imposed by or pursuant to section 3310(d) of the Code have ended.

In regard to the 1979 certifications, I have issued decisions affecting the certifications with respect to four States, and I have issued a decision on three States not affecting the certifications with respect to those States.

My decisions and the certifications reflecting those decisions are set out below.

Dated: November 1, 1979.

Ray Marshall,

Secretary of Labor.

U.S. Department of Labor v. State of Delaware Department of Labor; State of New Jersey Department of Labor and Industry; State of New York Department of Labor

[Conformity Proceedings ETA–1 (1979)]

Decision of the Secretary

Pursuant to section 3304(c) of the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3304(c), a hearing was held before Administrative Law Judge Robert A. Briggs to determine whether the unemployment compensation laws (including the interpretation and implementation of said laws) in the States of Delaware, New Jersey and New York are: (1) in conformity with section 3304(a)(6)(B) and section 3309(a)(2) of FUTA for the 12-month period ending October 31, 1979, and (2) in substantial compliance with said requirements of FUTA for the 12-month period ending October 31, 1979. A recommended decision was rendered by Administrative Law Judge Briggs on October 11, 1979 and served on all parties on October 12, 1979. Administrative Law Judge Briggs recommended that I find that the State laws in issue are both in conformity and in substantial compliance with sections 3304(a)(6)(B) and 3309(a)(2) of FUTA.

Pursuant to the rules of procedure governing this proceeding (see the Federal Register of July 13, 1979, 44 FR 40959–40963) the parties of record, within ten days after the recommended decision and certification was mailed to them, were permitted to file a written Statement of Exceptions with the Administrative Law Judge setting forth any exceptions they may have had to the recommended decision. Only one party to the proceedings, the U.S. Department of Labor, filed a Statement of Exceptions by the filing deadline, October 22, 1979. Pursuant to paragraph 16 of the governing rules of procedure, I am now required to render a written decision in this matter. After reviewing the entire record in this case my decision is as follows.

The States of Delaware, New Jersey and New York have enacted legislation permitting non-profit organizations and State and local governmental entities to elect the reimbursement method of financing unemployment compensation costs in lieu of the payroll tax contribution method required to be used by profit-making employers. The Department of Labor did not take issue with this. In their interpretation and implementation of their laws, however, the three States have determined that, under certain circumstances, reimbursing employers need not reimburse the unemployment compensation fund for compensation [1] paid out of that fund. The States have argued that section 3309(a)(2) of FUTA requires reimbursement only of compensation attributable under the State law to service with the reimbursing employer. Therefore, since their laws do not attribute to service with the employer certain compensation paid out as an overpayment due to fraud, or due to computer error or other mistakes, or paid out due to service with a subsequent employer, reimbursing employers in their States are not required by section 3309(a)(2) to reimburse such compensation.

In its Statement of Exceptions and elsewhere in the record the Department of Labor has contended, in essence, that such a procedure constitutes "noncharging" of employers, and that the concept of "noncharging," while relevant to contributing employers, is not relevant to reimbursing employers, which, it has contended, are required by section 3309(a)(2) to be self-insurers. In support of this argument, the Department introduced into the record several documents and rulings, principally a 1944 ruling of the Social Security Board which authorized the States, under certain circumstances, to "noncharge" (that is, refrain from charging a contributing employer's experience rating account) so long as they retained a reasonable method of measuring the employer's unemployment experience. In further support of its argument the Department cited as legislative history, the following sentences from the Report of the Committee on Finance, U.S. Senate (Senate Report No. 91–752), to accompany H.R. 14705, Employment Security Amendments of 1970:

> The States would be required also to provide non-profit organizations with the option of reimbursing the State for unemployment compensation payments attributable to service with the organization in lieu of paying contributions under the normal tax provisions of the State law. *In effect, the nonprofit organizations would be allowed to adopt a form of self-insurance.* (Emphasis added)

I agree with the contentions of the Department of Labor, as set forth in the record, that the concept of "noncharging", as it has been developed and applied in the case of contributing employers, is not applicable with respect to reimbursing employers. It does not follow, however, that reimbursing employers must therefore reimburse all compensation paid out of the unemployment fund with respect to their former employees. Whether, or under what circumstances, a *contributing employer* may be "noncharged" has no relevance to the issue presented in this case. The issue presented in this case concerns whether, or under what circumstances, a *reimbursing employer* may be relieved from reimbursing. I find, therefore, that the Administrative Law Judge was correct in his characterization of the issue in this case, and was correct in deeming irrelevant those parts of the record, such as the 1944 Social Security Board ruling, which dealt with the issue of "noncharging" contributing employers.

[1] Section 3306(h) of FUTA defines compensation as follows: "(h) Compensation. For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

To the extent the cash benefits are paid while the State has determined the individual is entitled, these benefits are payable, and as such are allowable compensation under section 3304(a)(4) of FUTA and section 303(a)(5) of the Social Security Act (which governs the use of money withdrawn from the unemployment fund).

The Administrative Law Judge was also correct in looking first to the statutory language to determine whether, or under what circumstances, a reimbursing employer may be relieved from reimbursing. It is a basic rule of statutory construction that one looks first to the statutory language, and, only if the statutory language is ambiguous or otherwise unclear, does one proceed to investigate the legislative history. With respect to the statutory language, the recommended decision stated, in relevant part:

> Stated simply, the determination of whether compensation benefits paid are 'attributable to service' with a reimbursing employer (and, accordingly, should be charged to the account of said employer for purposes of reimbursement) is committed by the *plain* terms of section 3309 (a)(2) to the States in the administration of their respective statutes. This is dispositive of the instant proceeding.
>
> It is recognized that one State may enact legislation charging reimbursing employers for benefits in a particular situation that would not be chargeable to such employers in another State.

I agree with the above-cited passage of the recommended decision. I therefore find, as a matter of law, that (1) a reimbursing employer must always fully reimburse the State unemployment fund whenever compensation, which is attributable to service with such employer, is paid out of such fund, (2) whether the compensation paid out is attributable to service with such employer is a matter to be determined under the provisions of the unemployment compensation law of the State, which reasonably interpret and implement section 3309 (a)(2) of FUTA, (3) the provisions of State law in issue in this case, whereby compensation is not considered attributable to service with the reimbursing employer when it is paid out due to service with a subsequent employer, or when it is an overpayment due to fraud, or due to computer error or other mistake, are reasonable interpretations and implementations of section 3309 (a)(2) of FUTA, and (4) a reimbursing employer may be relieved from reimbursing compensation paid out of the State unemployment fund with respect to its former employees whenever it is reasonably determined under such provisions of the State unemployment compensation law that the compensation paid out was not attributable to service with the reimbursing employer.

Although I have found that resort to the legislative history is unnecessary in light of the plain language of the statute, it is appropriate to make some comments with respect to the legislative history cited by the Department in the record (see above). The concepts of reimbursement and of reimbursing employers, which, for reason of important public policy, were introduced into FUTA by the Unemployment Compensation Amendments of 1970 and 1976, were, to some extent, a conceptual departure from the broad-based "insurance" concept underlying the unemployment compensation system whereby the risks, and thus the costs, of unemployment were spread among all those employers which contributed to the unemployment fund through the payroll tax. It is in this context, therefore, that the language of the Senate Report, cited above, should be understood. In stating that "In effect, the nonprofit organizations would be allowed to adopt a form of self-insurance," the Senate Report was explaining the compatibility of the new FUTA concepts of reimbursing and reimbursing employers with the insurance concepts underlying the unemployment compensation system. To understand the Senate Report's language as interpreting section 3309 (a)(2) of FUTA to require "pure self-insurance" (i.e., strict liability) of reimbursing employers is to read too much into the language of the report.

Based on the foregoing, I adopt the findings of fact and conclusions of law of the Administrative Law Judge to the extent they are compatible with the reasoning in this decision. I find that the unemployment compensation laws of the States of Delaware, New Jersey and New York (including the interpretation and implementation of said laws), with respect to the issues herein relating to reimbursing employers, are in conformity with the Federal Unemployment Tax Act (FUTA), as amended, 26 U.S.C. 3301 *et seq.*, and in substantial compliance with the Federal Unemployment Tax Act, as amended.

Signed at Washington, D.C. this 31st day of October, 1979.

Ray Marshall,

Secretary of Labor.

U.S. Department of Labor v. Commonwealth of Pennsylvania Department of Labor and Industry

Conformity and Substantial Compliance Proceeding; Decision of the Secretary

This is a proceeding pursuant to section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)) to determine whether the unemployment compensation law of The Commonwealth of Pennsylvania has been amended so that it contains, effective November 1, 1979, each of the provisions required by law and has been in conformity and substantial compliance with such provisions with respect to the 12-month period ending October 31, 1979.

At issue, as outlined in the Notice of Hearing, are three provisions of Pennsylvania law. The issues are:

> Whether the Pennsylvania Unemployment Compensation Law, which provides for the omission or removal of unemployment compensation charges from the accounts of employers liable for the payment of reimbursements to the State's unemployment fund, conforms with the provisions required by sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), as amended by section 506 of Pub. L. 94-566 and section 302(b) of Pub. L. 95-19;
>
> 2. Whether the Pennsylvania Unemployment Compensation Law, which provides under specified conditions for payment of unemployment compensation retroactively for weeks of unemploymet that had been properly denied between academic years or terms, 3304(a)(6)(A)(ii) of such Code (26 U.S.C. 3304(a)(6)(A)(ii)), as added by section 115(c) of Pub. L. 94-566;
>
> 3. Whether the Pennsylvania Unemployment Compensation Law, which provides under specified conditions for the denial of unemployment compensation between academic years or terms to governmental employees who are not employees of educational institutions, conforms with the provisions of section 3304(a)(6)(A) of such Code (26 U.S.C. 3304(a)(6)(A)), and clauses (i), (ii), and (iii) thereof, as amended by section 115(c) of Pub. L. 94-566 and section 302(c) of Pub. L. 95-19; and
>
> 4. Whether the Commonwealth of Pennsylvania has failed to comply substantially with any of the Federal law provisions referred to in issues 1 to 3 above.

The result of this proceeding will determine whether the Commonwealth of Pennsylvania is certifiable on October 31, 1979, first, with respect to normal and additional tax credits allowable to Pennsylvania employers pursuant to subsections (a) and (b) of section 3302 of the Internal Revenue Code of 1954 for taxable year 1979, and, second, with respect to payment to the Commonwealth of Pennsylvania of granted funds pursuant to section 302(a) of the Social Security Act (42 U.S.C. 502(a)) and section 5(b) of the Wagner-Peyser Act (29 U.S.C. 49d(b)).

I have carefully studied the evidence of record and considered all of the arguments presented with respect ot the issues and all the exceptions. It is my conclusion that the findings of fact discussion, and conclusions of law of the Judge in his Recommended Decision (attached to this Decision) are supported by the record and in accordance with applicable law except as they are inconsistent with the discussion and conclusions of law set forth below. I therefore adopt them as my own to the extent they are consistent with the discussion and conclusions set forth below.

Discussion

Noncharging of Reimbursing Employers

Whether reimbursing employers are to be cahrged by the State when compensation is paid and later found to have been paid to ineligible individuals is up to the State.

Section 3306(h) of the IRC of 1954 defines compensation as follows:

"(h) Compensation. For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

To the extent the cash benefits are paid which the State has determined the individual is entitled, these benefits are payable, and as such are allowable compensation under section 3304(a)(4) of the IRC of the 1954 and section 303(a)(5) of the Social Security Act (which governs the use of money withdrawn from the unemployment fund). While these benefits are payable when actually paid (and therefore compensation) does not, however, govern whether the Sate must attribute them to the reimbursing employer.

Section 3309(a)(2) of the IRC of 1954 allows an eligible employer to elect to pay (in reimbursement) into the State unemployment fund "amounts equal to the amounts of compensation attributable under the State law to such service." It is up to each State to determine whether or not compensation "payable" when paid, but later found to have been paid to ineligible individuals, should be attributed to service with the employer.

Conclusion of Law

1. The Pennsylvania Unemployment Compensation Law conforms with the requirements of FUTA sections 3304(a)(6)(B) and 3309(a)(2) and Pennsylvania has substantially complied with FUTA in this regard for the 12-month period preceding October 31, 1979.

The Pennsylvania Unemployment Compensation Law does not conform with FUTA section 3304(a)(6)(A)(ii) insofar as it provides for retroactive payment of unemployment compensation that had properly been denied between academic years or terms to nonprofessional employees of educational institutions. Pennsylvania has not substantially complied with FUTA in this regard for the 12-month period preceding October 31, 1979.

3. During the 12-month period preceding October 31, 1979, Pennsylvania does not conform with and has failed to substantially comply with the provisions of FUTA section 3304(a)(6)(A) which limit the between-terms denial of benefits to employees of educational institutions and educational service agencies.

Accordingly, I find that the Pennsylvania Law conforms with and is in substantial compliance with Federal Law with respect to noncharging reimbursers (sections 3304(a)(6)(B) and 3309(a)(2) of the IRC of 1954). I find it fails to conform with and be in substantial compliance with Federal law with respect to school crossing guards (section 3304(a)(6)(A) of the IRC of 1954) and retroactivity (section 3304(a)(6)(A)(ii) of the IRC of 1954).

Dated at Washington, D.C. this 31st day of October.

Ray Marshall

Secretary of Labor.

U.S. Department of Labor v. Commonwealth of Pennsylvania, Department of Labor and Industry

Conformity Proceeding.

For the U.S. Department of Labor:

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For the Commonwealth of Pennsylvania, Department of Labor and Industry:

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William R. Balaban, Esq., P.O. Box 1188, Harrisburg, PA 17108.

Before: Richard A. Scully

Administrative Law Judge.

Recommended Decision

Statement

Pursuant to a Notice of Hearing issued by the Secretary of Labor on July 19, 1979 (ALJ Ex. 1), the Commonwealth of Pennsylvania, Department of Labor and Industry was afforded the opportunity for a hearing on the questions of whether the unemployment compensation law of the Commonwealth of Pennsylvania has been amended so that it contains, effective November 1, 1978, each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566, 90 Stat. 2667) and Title III of the Emergency Unemployment Compensation Extension Act of 1977 (Pub. L. 95-19; 91 Stat. 39, 43) and /or has with respect to the 12-month period ending October 31, 1979, failed to substantially comply with any such provision.

On October 31, 1979, the Secretary of Labor must certify each State which has an unemployment compensation law containing each of the provisions specified in Section 3304(a) of the Federal Unemployment Tax Act ("FUTA"), 26 U.S.C. § 3304(a), and which has not failed to substantially comply with any such provision during the preceding 12-month period. Certification is necessary in order for employers within the State to be entitled to credit against federal unemployment taxes and in order for the State to receive federal funds to pay the costs of administering its unemployment compensation program.

A hearing was held in Washington, D.C. on August 21, 1979, at which the parties were given the opportunity to present testimony, documentary evidence and argument and the interested persons who had made application to participate in the proceeding were given the opportunity to present argument. Briefs and reply briefs have been received.

Issues

The issues, as outlined in the Notice of Hearing, are as follow:

1. Whether the Pennsylvania Unemployment Compensation Law, which provides for the omission or removal of unemployment compensation charges from the accounts of employers liable for the payment of reimbursements to the State's unemployment fund, conforms with the provisions required by Sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), as amended by Section 506 of Pub. L. 94-566 and Section 302(b) of Pub. L. 95-19;

2. Whether the Pennsylvania Unemployment Compensation Law, which provides under specified conditions for payment of unemployment compensation retroactively for weeks of unemployment that had been properly

denied between academic years or terms, conforms with the provisions required by Section 3304(a)(6)(A)(ii) of such Code (26 U.S.C. 3304(a)(6)(A)(ii)), as added by Section 115(c) of Pub. L. 94–566;

3. Whether the Pennsylvania Unemployment Compensation Law, which provides under specified conditions for the denial of unemployment compensation between academic years or terms to governmental employees who are not employees of educational institutions, conforms with the provisions of Section 3304(a)(6)(A) of such Code (26 U.S.C. 3304(a)(6)(A)), and clauses (i), (ii), and (iii) thereof, as amended by Section 115(c) of Pub. L. 94–566 and Section 302(c) of Pub. L. 95–19; and/or

4. Whether the Commonwealth of Pennsylvania has failed to comply substantially with any of the Federal law provisions referred to in issues 1 to 3 above.

Findings of Fact

Upon consideration of all of the evidence in the record of this proceeding, I make the following findings of fact:

1. From on or about May 24, 1977, through on or about June 1, 1979, representatives of the U.S. Department of Labor and Pennsylvania have engaged in communications, both written and oral, concerning questions about conformity of the Pennsylvania unemployment compensation law to FUTA and compliance with the provisions of FUTA.

2. By letters dated June 11, 1979, the Secretary of Labor informed the Governor of Pennsylvania and the Secretary of the Pennsylvania Department of Labor and Industry that there was reason to believe that the Pennsylvania law would not be certified, that he was commencing conformity proceedings with respect to remaining unresolved questions and offered them the opportunity for a hearing.

3. By letter dated July 10, 1979, to the Secretary of Labor, the Secretary of the Pennsylvania Department of Labor and Industry requested a hearing on all of the conformity matters stated in the letters of June 11, 1979.

4. On July 19, 1979 a formal Notice of Hearing and the Rules of Procedure governing this proceeding were issued by the Secretary of Labor and served upon the Secretary of the Pennsylvania Department of Labor and Industry. Copies of this Notice of Hearing and of the Rules of Procedure were published in the Federal Register on July 24, 1979. 44 Fed. Reg. No. 143, p. 43362.

5. Pennsylvania has amended its unemployment compensation statute to provide that the Commonwealth, its political subdivisions, and nonprofit organizations have the option to pay for unemployment compensation costs on a reimbursement basis or by contributions. Sections 1003(a), 1104 and 1202.2(a) of the Pennsylvania Unemployment Compensation Law.

6. Under the Pennsylvania law, employers using the contribution method may be non-charged for benefits paid to former employees in four circumstances: (1) Where benefits are paid to a claimant later determined to be ineligible; (2) Where benefits are paid to an eligible claimant initially disqualified for benefits by reason of separation from that employer who later requalifies in subsequent employment; (3) Where benefits are paid to a claimant who is eligible by reason of having left that employment for good personal cause; and (4) Where a part-time employer is non-charged because of a claimant's entitlement to benefits upon separation from another full-time employer.

7. Under Pennsylvania law, an employer using the reimbursement method may be non-charged for benefits only in the case where benefits are paid to a claimant who is later determined to be ineligible, pursuant to Pennsylvania Attorney General's Official Opinions 78–1 and 78–7, dated January 12, 1978 and March 20 1978, respectively.

8. During Pennsylvania's fiscal year 1979, all unemployment compensation benefits paid totaled $777,920,954. A total of $10,483,265 was non-charged to all employers by reason of payments to ineligible claimants. Of this amount, the total amount non-charged to reimbursing employers was $234,504, which is less than 0.03 percent of total benefits paid to all claimants.

9. The Pennsylvania Unemployment Compensation Law has been amended to provide at Sections 402.1 (1), (2) and (3) both the mandatory and optional between-terms disqualification for benefits with respect to services performed for an educational institution which are required or permitted by FUTA Sections 3304(a)(6)(i), (ii) and (iii). However, Section 402.1(2), concerning the optional disqualification provision, reads as follows:

(2) With respect to services performed after December 31, 1977, in any other capacity for an educational institution other than an institution of higher education as defined in section 4(m.2), benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms. However, if upon presenting himself for work at the end of such period between academic years or terms, the individual is not permitted to resume work of the same capacity, or resumes it for less than twenty working days, his claims for unemployment compensation during such period shall be accepted retroactively to the time the individual's benefits would have commenced if the individual had not received reasonable assurance of employment and considered under the eligibility provisions of this act and benefits shall be paid with respect to any weeks for which his eligibility is established. This provision shall apply also to holiday and vacation periods.

This permits persons subject to that section (persons who perform nonprofessional service for primary and secondary schools) to receive unemployment compensation benefits retroactively if their jobs fail to materialize in the succeeding term despite earlier assurance of employment.

10. The Pennsylvania Bureau of Employment Security has interpreted the between-terms denial of benefits provision of Section 402.1 of the Pennsylvania Unemployment Compensation Law to apply to school crossing guards and other government or nonprofit organization employees performing services for educational institutions although they are not employed by an educational institution or an educational service agency, effective May 3, 1979.

Discussion

FUTA § 3304(c) requires that on October 31 of each year the Secretary of Labor must certify each State which has an unemployment compensation law which has been amended to contain all of the provisions specified in FUTA § 3304(a) and which has substantially complied with such provisions during the preceding 12-month period. In the event the Secretary finds that a State does not have a law with all such provisions or has not substantially complied with any such provision, the State must be given reasonable notice and an opportunity for hearing before certification is denied. Such notice and the opportunity for hearing were given in the present case after prolonged communications among representatives of the U.S. Department of Labor and the Pennsylvania Department of Labor and Industry concerning the issues in dispute.

Pennsylvania apparently takes the position that the Secretary of Labor can do no more than read the Pennsylvania

statute and, if he finds that it contains language similar to that required by FUTA § 3304(a), he must certify it without reference to the interpretation given the statutory provisions by the State's courts and administrative agencies. This argument ignores the fact that FUTA also requires the Secretary to certify that the State has substantially complied with the specified provisions of its unemployment compensation law. This is pointed out in the same law review article cited in the Department of Labor and Industry's brief (p. 9), which goes on to state:

> The Department of Labor determines whether each state law contains the required provisions through examination of the law and the amendments thereto. The Department determines whether there is substantial compliance through an examination of the state's administrative and court rulings after they become final. Larson and Murray, *The Development of Unemployment Insurance in the United States,* 8 Vand. L. Rev. 181, 209 (1955).

The FUTA provisions for notice and hearing and for judicial review of the Secretary's findings in cases in which certification is denied would have little meaning if the Secretary had to base his decision solely on the literal language of the State law. It is significant that FUTA § 3304(c) states in part:

> No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending.

While paragraph 5 of subsection (a) is not involved here, this language clearly indicates that FUTA § 3304(c) contemplates that the Secretary will consider administrative and judicial interpretations of the State's law in arriving at his decision as to whether or not that State will be certified.

Pennsylvania also contends that this proceeding is not the appropriate means of adjudicating the issue of substantial compliance. It argues that if the Secretary of Labor wishes to challenge its interpretation and application of the provisions of its unemployment compensation law, he should do so by intervening in or appearing as *amicus curiae* in unspecified court proceedings, which may or may not eventuate, or by seeking declaratory relief against the State in a Federal court, rather than in a certification challenge which, it alleges, places a State's entire unemployment compensation program and its economy in jeopardy. The simple answer to this is that Congress has imposed a mandatory duty in the Secretary to determine whether a State has substantially complied with the statutory provisions specified in FUTA before the State's law can be certified. It has also determined that all issues concerning certification of the State's law shall be resolved in the proceedings prescribed in FUTA §§ 3304(c) and 3310, which provide for notice and hearing and judicial review in a United States Court of Appeals. In view of this statutory mandate, the Secretary has no alternative but to proceed as he has.

The parties disagree on the standard to be used in determining whether the Pennsylvania law should be certified and on the question of the weight or deference to be accorded the Department of Labor's interpretations of the pertinent FUTA provisions. On the first point, Pennsylvania contends that its statute can be denied certification only if it "plaintly conflicts" with FUTA. However, the weight of authority leads to the conclusion that the correct standard is whether the Pennsylvania law is "inconsistent" with FUTA. See *California Dept. of Human resources Develop.* v. *Java,* 402 U.S. 121, 135 (1971); *Rosado* v. *Wyman,* 397 U.S. 397, 402 (1970); *King* v. *Smith,* 392 U.S. 309, 333 (1968).

On the second point, generally, the interpretation given a statute by the agency charged with its administration is entitled to great weight. *Johnson* v. *Robison,* 415 U.S. 361, 367–368 (1974). Congress has given the Secretary of Labor the responsibility to administer the provisions of FUTA dealing with approval of State unemployment compensation laws and the Department of Labor's contemporaneous interpretations of the 1970 and 1976 amendments to FUTA are entitled to such weight, but only to the extent that they are reasonable in the light of the language of the statute and its legislative history and not if there are compelling indications that they are wrong. *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 381 (1969); *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965); *Espinoza* v. *Farah Manufacturing Co.,* 414 U.S. 86, 94–95 (1973).

Non-Charging of Reimbursing Employers

The Pennsylvania Unemployment Compensation Law provides governmental and nonprofit employers the option of financing unemployment compensation through the reimbursement method in accordance with FUTA §§ 3304(a)(6)(B) and 3309(a)(2).

FUTA § 3309(a)(2) provides that a reimbursing employer must pay into the State unemployment fund "amounts equal to the amounts of compensation attributable under State law to . . . service" for such employer. Pursuant to rulings of the State's Attorney General, Pennsylvania interprets its law to permit non-charging of reimbursing employers for benefits paid to claimants later found to be ineligible for benefits. This conflicts with the interpretation of the FUTA requirements by the Department of Labor (US DOL Ex. 13). It is the Department's position that to the extent there has been an erroneous payment or overpayment based on service with such an employer which is not recovered, the reimbursing employer must bear the loss. The Department would permit non-charging only where the erroneous payments are recovered or the State is reimbursed therefor by the United States.

Pennsylvania argues that FUTA does not expressly or by reasonable implication prohibit non-charging of reimbursing employers for benefits paid to ineligible claimants. It argues that FUTA § 3306(c) defines "compensation" to mean "cash benefits payable to individuals with respect to their unemployment" and that, as a matter of law, cash benefits are not "payable" to individuals ineligible to receive them. It also argues that FUTA requires that reimbursing employers pay into the State fund only "amounts of compensation attributable under State law to . . . service" in their employ, that the terms "attributable" and "service" are not defined in FUTA; and that clearly, benefits paid to ineligible claimants are not attributable to service in the employ of any employer but are attributable to administrative errors by the State unemployment agency.

The Department of Labor dismisses this as a "perfectly circular argument" and argues that benefits paid to ineligible recipients are compensation because all money withdrawn from the State's unemployment fund must be used solely for payment of benefits or refunds of sums erroneously paid into it pursuant to FUTA § 3304(a)(4) and Social Security Act § 303(a)(5). If these are not benefits, it contends, then, funds are being withdrawn in violation of these provisions.

I find Pennsylvania's argument persuasive. The fact that FUTA relates compensation to service attributable "under State law" to an employer indicates that State law should be controlling. In Pennsylvania, the State Attorney General has interpreted the State law to mean that benefits paid to

an ineligible claimant solely due to administrative error are not attributable to service in the employ of the reimbursing employer or anyone else. Absent some indication of Congressional intent that the reimbursing employer should be liable for costs incurred through errors, which it does not cause, over which it has no control, and no opportunity to prevent, I cannot accept the Department of Labor's argument. Also I do not believe that FUTA § 3304(a)(4) and Social Security § 303(a)(5) are controlling or even relevant on this issue. The question is not whether funds are properly withdrawn from the unemployment fund but whether the employer is properly being charged.

The Department of Labor contends that the legislative history of FUTA supports its position but refers to only one sentence in a 1966 Senate report referring to the reimbursement method as "a form of self-insurance." S. Rep. No. 1425, 89th Cong., 2d Sess. 10. As Pennsylvania points out, however, the situation of the reimbursing employer under the Department of Labor's view is far different from that of a true self-insurer. Unemployment benefits are not paid directly by the employer but are disbursed from public funds to effectuate a public purpose. They are paid from the State unemployment fund, not to discharge an obligation or liability of a particular employer, but to carry out a social program benefitting the entire State. *New York Telephone Co.* v. *New York State Dept. of Labor*, — U.S. —. 99 S. Ct. 1328, 1338, n.26 (1979). Further, the employer cannot consensually pay a claim nor can it directly recover benefits paid in error. It appears that under the Department of Labor's interpretation the reimbursing employer is a guarantor and not a self-insurer.

In the Senate report referred to above, it was pointed out that the reimbursement option was being made available to nonprofit organizations because of the "special considerations they customarily receive." S. Rep. No. 1425, 89th Cong., 2d Sess. 10. In view of the favored position accorded those given this option, it is unlikely that Congress intended to oppose them to potential disaster by requiring them to bear any and all costs resulting from payment of benefits to former employees even where such costs are incurred through error. It is true, as the Department suggests, that an eligible employer must weigh the risks in deciding whether to opt for the reimbursement method. But in order to make such a decision, the risks must be readily ascertainable. An employer can reasonably anticipate its potential liability for properly awarded unemployment benefits based on service in its employ, but it cannot conceivably estimate with certainty the costs it may become exposed to as the result of erroneous payments it can neither prevent nor directly recover. I do not believe that Congress intended that these employers be subjected to such uncontrollable risks. On this issue, I do not believe the Department's interpretation is supported by the language of the statute or its legislative history.

The Department has also suggested that permitting noncharging of these employers could jeopardize the integrity of State unemployment funds. No evidence has been presented which would support this contention. The only relevant evidence in the record are the statistics concerning Pennsylvania's fiscal year 1979 in which non-charges to reimbursing employers for benefits erroneously paid to ineligible claimants amounted to only $235,504 out of total non-charges to all employers of over $10 million and out of over $777 million in benefits paid out. It would appear that the burden to contributing employers in the State caused by such non-charges, if any, was minimal.

Retroactive Payment of Between-Terms Benefits

Pennsylvania has enacted the optional between-terms denial of benefits provision with respect to nonprofessional employees performing services for educational institutions, permitted by FUTA § 3304(a)(6)(A)(ii), as a part of its unemployment compensation law, but has added a provision which permits retroactive payment of benefits should their jobs fail to materialize in the succeeding term.

FUTA does not provide for such retroactive payments and a proposed amendment to the 1976 Amendments to FUTA designed to permit retroactive payments to nonprofessional school employees was defeated. While, as Pennsylvania points out, unsuccessful attempts at legislation are not always a reliable guide to legislative intent, where the amendment in question was proposed as a part of the legislation that added the optional between-terms denial provisions to FUTA, its rejection would appear to be a clear indication of legislative intent not to allow payment of retroactive benefits under the circumstances permitted by the Pennsylvania law.

In addition, FUTA § 3304(a)(6)(A) requires that compensation must be payable to employees of nonprofit organizations and governmental units in the same amount on the same terms and subject to the same conditions as it is payable to other covered employees. There is no evidence that retroactive payments are available under similar circumstances to employees of other nonprofit organizations, governmental units or private employers. Accordingly, this provision in the Pennsylvania law does not meet the equal treatment requirement of FUTA and in this regard its law is inconsistent with FUTA.

On this issue, the Department of Labor's interpretation of the requirements of FUTA is reasonable and consistent with the language of the statute. Pennsylvania has presented neither evidence nor a persuasive argument to the contrary.

Pennsylvania does argue that the deviation from FUTA is so minor on this point that it cannot be said to not be in substantial compliance with the provisions of FUTA. It appears that the substantial compliance standard was used by Congress to prevent a State law from losing certification because of mistakes which might occur in its administration. Here, however, there is a fundamental difference in what the Pennsylvania law provides and what FUTA permits and requires. On this issue, the Pennsylvania law is not in conformity with the provisions of FUTA. This being so, there is no way that it can be found to be in substantial compliance with FUTA.

Between-Terms Denial Provisions

The between-terms denial of benefits provisions in FUTA § 3304(a)(6)(A) is an exception to the coverage requirements of that section. The language of the statute restricts this exception to persons performing specified services "for an educational institution" or persons performing such services "in an educational institution while in the employ of an educational service agency." Pennsylvania interprets its law to apply the between-terms denial of benefits to persons who are not employed directly by an educational institution but who perform services for educational institutions and whose employment is tied to the academic calendar. The example used most often is that of the street crossing guard who is on a municipal payroll but performs services to assure the safety of children in the vicinity of a school and who works only when schools are in session.

The Department of Labor interprets the between-terms denial provision of § 3304(a)(6)(A) to apply only to employees of specified educational institutions or educational service agencies. On this issue also, I find that

the Department's interpretation is reasonable and supported by the language of the statute and the legislative history of FUTA and its entitled to great weight. As an express exception to the coverage required by FUTA the between-terms denial provision should be narrowly applied.

While the phase "'for an educational institution" might be somewhat ambiguous, the portions of the legislative history cited by the Department and the fact that in the 1976 Amendments, Congress broadened this exception to a very limited extent by including employees of an educational service agency within it is convincing evidence that it was intended to apply only to individuals actualy employed by educational institutions. As the Department points out, if the Pennsylvania position on this issue correctly reflected the Congressional intent, the educational service agency amendment would have been superfluous.

I do not find persuasive Pennsylvania's argument that the between-terms denial provision of its law should be disregarded because employees, such as crossing guards, would be denied benefits under another section of the Pennsylvania law, Section 401(d), because they are not "'able to work and available for suitable work." What Section 401(d) provides would appear to be irrelevant to whether Pennsylvania properly interprets the between-terms denial provisions of its law and in any event it appears that whether Section 401(d) disqualifies an employee from benefits depends on the circumstances of each individual case and it cannot be said with absolute certainty that it would apply in every case in which the between-terms denial provisions also applies. The interpretation placed on the between-terms denial provision of the Pennsylvania Unemployment Compensation Law by the State agency administering that law precludes a finding that Pennsylvania has been in substantial compliance with FUTA on this issue for the 12-month period preceding October 31, 1979, since such interpretation is inconsistent with FUTA and it represents an intentional and systematic deviation from the FUTA requirements.

Conclusions of Law

1. The Pennsylvania Unemployment Compensation Law conforms with the requirements of FUTA §§ 3304(a)(6)(B) and 3309(a)(2) and Pennsylvania has substantially complied with FUTA in this regard for the 12-month period preceding October 31, 1979.

2. The Pennsylvania Unemployment Compensation Law does not conform with FUTA § 3304(a)(6)(A)(ii), insofar as it provides for retroactive payment of unemployment compensation that had properly been denied between academic years or terms to nonprofessional employees of educational institutions.

3. During the 12-month period preceding October 31, 1979, Pennsylvania has failed to substantially comply with the provisions of FUTA § 3304(a)(6)(A) which limit the between-terms denial of benefits to employees of educational institutions and educational service agencies.

Recommendation

In accordance with the foregoing findings of fact and conclusions of law, I recommend that the Secretary of Labor not certify the Pennsylvania Unemployment Compensation Law on the grounds that it is not in conformity with the specified provisions of FUTA and Pennsylvania has not substantially complied with all of the required provisions of FUTA during the 12-month period preceding October 31, 1979.

Dated: October 19, 1979, Washington, D.C.

Richard A. Scully,

Administrative Law Judge.

U.S. Department of Labor v. State of New Hampshire Department of Employment Security

Conformity/Substantial Compliance, Proceeding; Decision of the Secretary

This is a proceeding pursuant to Section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), Sections 303(a) and 303 (b) of the Social Security Act (42 U.S.C. §§ 503(a) and 503 (b)), and 20 CFR 601.5(a) to determine whether the State of New Hampshire has amended its Unemployment Compensation Law: (1) so that it contains, for the 12 month period ending on October 31, 1979, each of the provisions required to be contained therein by reason of the enactment of the Unemployment Compensation Amendments of 1976 (Public Law 94-566, approved October 20, 1976, 90 Stat. 2667 *et seq.*) and Title III of the Emergency Unemployment Compensation Extension Act of 1977 (Public Law 95-19, approved April 21, 1977; 91 Stat. 39, 43, *et seq.*); (2) so that it includes the provisions specified in Section 303(a) of the Social Security Act (26 U.S.C. 503(a); and/or (3) so that it has, with respect to the 12-month period ending on October 31, 1979, failed to comply substantially with any of the required Federal law provisions as provided in Section 3304(c) of the Internal Revenue Code of 1954 and Section 303(b) of the Social Security Act (42 U.S.C. 3304(c) and 42 U.S.C. 503(b).

The result of this proceeding will determine whether the State of New Hampshire is certifiable on October 31, 1979, first, with respect to normal and additional tax credits allowable to New Hampshire employers pursuant to subsections (a) and (b) of Section 3302 of the Internal Revenue Code of 1954 for taxable year 1979, and, second, with respect to payment to the State of New Hampshire of granted funds pursuant to Section 302(a) of the Social Security Act (42 U.S.C. 502(a)) and Section 5(b) of the Wagner-Peyser Act (29 U.S.C. 49d(b)).

The Unemployment Compensation Amendments of 1976, (Public Law 94-566, (the "1976 Amendments") for the first time required that the states provide unemployment compensation coverage for virtually all service in the employ of the states, their political subdivisions, and joint instrumentalities thereof, as well as non-profit, tax-exempt organizations, as a condition for tax credits to the states' private employers under the Federal Unemployment Tax Act (FUTA) and grants for the administration of their employment security programs.

A number of states, including New Hampshire, joined in a legal action in 1977 in the United States District Court for the District of Columbia challenging the constitutionality of the coverge provisions of the 1976 amendments affecting state and local governmental entities. That action was dismissed on jurisdictional grounds but in so doing the federal district court expressed the view that the provisions of the 1976 Amendments which extended coverage to State and local governmental entities were not unconstitutional. See *Los Angeles County, California v. Marshall*, 442 F. Supp. 1186, now pending on appeal in the United States Court of Appeals for the District of Columbia Circuit.

New Hampshire was the only state refusing to enact even provisional legislation implementing the new coverage prior to its effective date January 1, 1978. Accordingly, the Secretary of Labor on February 24, 1978 notified the State of New Hampshire that serious conformity questions existed which could affect his ability to certify the State under 26 U.S.C. § 3304(c) on October 31, 1978. A conformity proceeding followed in which evidence was taken on both statutory and constitutional issues. As a result, the Secretary of Labor found the State of New Hampshire out of conformity with federal law with regard to six separate issues. The Secretary's 1978 Decision, which is included in the

record of this proceeding as DOL Exhibit 18, was appealed to the United States Court of Appeals for the First Circuit, which stayed the Secretary's Decision pending the outcome of that appeal.

In the meantime the United States Department of Labor (DOL) and certain state officials continued their efforts to bring New Hampshire into conformity and substantial compliance with federal law before the next certification deadline, October 31, 1979. New Hampshire did enact new legislation amending its unemployment compensation law in June 1979. However, DOL determined that these amendments did not resolve all of the issues and concluded that a new conformity proceeding was necessary against New Hampshire.

Pursuant to a notice published in the Federal Register (44 FR 48393, August 17, 1979), and Rules of Practice incorporated therein, a hearing was held before an Administrative law judge, hereinafter sometimes referred to as the Judge, on September 6, and 7, 1979, at which the parties were afforded an opportunity to examine witnesses and introduce documentary evidence relating to the issues of conformity and substantial compliance as well as the the constitutionality of certain federal requirements. By stipulation at a Pre-Hearing Conference on August 30, 1979, the parties agreed to incorporate specified portions of the record in the 1978 proceeding dealing with the constitutional issues (Joint Exhibit No. 1). Thereafter briefs were filed by both parties and counsel for DOL submitted proposed findings of fact and conclusions of law.

On October 15, 1979 the Judge issued a recommended decision in the matter (hereinafter sometimes referred to as Rec. Dec. or R.D.), in which he found that the New Hampshire Unemployment Compensation Law is not in conformity or substantial compliance with FUTA with respect to all but one of the eight conformity and substantial compliance issues specified in the notice of hearing. That one, number 7, was dropped and the reference to it in number 8 deleted by agreement of the parties at the prehearing conference. Neither party has filed exceptions to the Judge's Recommended Decision.

The administrative law judge made the following findings of fact and conclusions of law in this Recommended Decision:

Findings of Fact With Respect to Statutory Issues

1. The record in this proceeding reveals a long series of communcations between DOL and New Hampshire officials, both written and oral, in an effort to resolve outstanding conformity and substantial compliance problems, some of them still unresolved since the 1978 conformity proceeding involving the same parties, These communications began in February of 1979 and continued through the date of the hearing in this matter. (DOL Exhibits 1–12; Testimony of Mr. Wagman.)

2. On April 12, 1979, a public hearing was held by the New Hampshire House Committee on Labor, Human Resources, and Rehabilitation on proposed House Bills 757 and 808, by means of which New Hampshire officials hoped to bring their unemployment compensation law into conformity with federal requirements. After being informed of the hearing a DOL representative offered preliminary comments on the proposed bills, advising the Committee they would be insufficient to resolve the outstanding conformity problems. (Tr. at 428, 420, 440; DOL Exhibit 7.)

3. On May 8, 1979, DOL forwarded to the New Hampshire Governor's Assistant Counsel more detailed comments on H.B. 808, raising each of the conformity issues now a part of this proceeding. (DOL Exhibit 8.)

4. Later in May 8, 1979, correspondence was exchanged between the Governor and the Secretary, referring to the issues identified in the May 8, 1979, letter, and agreeing that New Hampshire could resolve its conformity problems by both passing H.B. 808, and by adopting regulations and taking administrative action acceptable to DOL to cure the remaining defects in the legislation and implement the appropriate provisions retroactively to January 1, 1978. (DOL Exhibits 9, 10, and 11.) Draft regulations to accomplish these aims were forwarded by DOL to the Governor's Assistant Counsel on June 20, 1979, including provisions dealing with all the issues raised in the subsequent Notice of hearing. (DOL Exhibit 12; Tr. at 173–233.)

5. Despite these efforts by both DOL and State officials, neither the DOL draft regulations nor any other acceptable regulations had been adopted by the State at the time of the hearing. (Tr. at 246–50). Nor had DOL been notified prior to the hearing of any administrative action taken to satisfy the second condition of the agreement between the Governor and the Secretary. (Tr. at 250–52.)

6. Since 1950, DOL has developed and communicated to the states official interpretations of the "methods of administration" provision at Section 303(a)(1) of the Social Act, 42 U.S.C. 503(a)(1). These interpretations include the following documents:

(a) *Manual of Statement (sic) Employment Security Legislation, Revised September, 1950* portions of which are in the record as DOL Exhibit 22(b));

(b) Field Memorandum No. 165–72, attaching "Proposed Amendments to the State Unemployment Insurance Laws or Regulations to Implement Developments Since Issuance of *Draft Legislation to Implement the Employment Security Admendments of 1970 . . . H.R. 14705*" (DOL Exhibit 20); and

(c) *Draft Language and Commentary to Implement the Unemployment Compensation Admendments of 1976—P.L. 94–566*, with supplements thereto (DOL Exhibit 19).

7. The record indicates that NHDES has taken some administrative action to implement retroactive coverage of previously-uncovered services performed in the employ of political subdivisions and the State. (Testimony of Arel, Tr. at 309–315; Acorace, Tr. at 379–89; and Tetler, Tr. at 479–512; Exhibits R–5, R–6, and R–7.) However, the record contains no evidence that any notice was provided or administrative action taken to implement coverage of joint instrumentalities of the State of its political subdivisions, or to implement coverage of services performed in the employ of any state or local governmental entity to the extent that such services fall within the provisions of RSA 282:1, H(4)(a), (b), (t), and (u), or RSA 282:1, N(1).

8. New Hampshire has generally administered its law so as to cover both hospitals and institutions of higher education since 1972, as a result of the 1970 Amendments. However, no evidence was brought forward to show actual practice by the State in the area of coverage of schools below the level of institutions of higher education, or in the area of services performed in the employ of tax-exempt non-profit organizations to the extend that such services fall within the provisions of RSA 282:1, H(4)(a), (b), and (t) or RSA 282:1, N(1).

9. Although the State introduced testimony to the effect that the State agency began paying claims to former employees of political subdivision in July of 1979, began billing such claims to reimbursing employers in August, and anticipate receiving reimbursements to the State fund by the end of September, no documentary evidence was brought forward to support this claim. In addition, the evidence was insufficient to show that the State was actually administering its program in such a way as to ensure the imposition of due dates. Interest and penalties for delinquent payments, and adequate methods of

enforcing collection from reimbursing employers.

10. No evidence was introduced by the State to indicate its actual practice with respect to the federal law requirements involving reimbursement of the full cost of extended benefits by governmental entities, equal treatment in general, or equal treatment with respect to sports personnel.

Conclusions of Law With Respect to Statutory Issues

1. In relevant part, Section 3304(a)(A) of FUTA requires an approved State law, effective January 1, 1978, to provide that—

> (6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law. . . .
>
> * * * * *

Section 3309(a)(1) of FUTA, in relevant part, provides:

> (a) *State Law Requirements.*—For purposes of section 3304(a)(6)—(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—
>
> * * * * *
>
> (B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c) . . .

Section 3306(c)(7) of FUTA provides:

> (7) services performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;
>
> * * * * *

These three sections of FUTA, when read together, require a State to cover for benefit purposes, effective January 1, 1978, State and political subdivision employees, with certain limited exceptions stated in §§ 3309(b) and 3306(c), under its State unemployment compensation law.

2. The New Hampshire law does not provide the full coverage required by the above-cited sections of FUTA because the definition of "employer" in RSA 282:1, G, as amended by Chapter 328 [H.B. 808], Laws 1979, neither expressly nor by implication includes coverage of the State of New Hampshire, its political subdivisions, and their instrumentalities.

3. The New Hampshire law also fails to provide the ful coverage required by the above-cited provisions of FUTA because the State law contains exemptions not authorized by FUTA when applied to services in the employ of a governmental entity. Specifically, the provisions of RSA 282:1, H(4)(a), (b), (t), and (u), and RSA 282:1, N(1), as amended by Chapter 328 [H.B. 808], Law 1979, exempt the services and wages described therein, from coverage as "employment" and "annual earnings," respectively. In contrast, the Federal law at 26 U.S.C. 3304(a)(6)(A) and 3309(a)(1) requires coverage of employees of the State of New Hampshire, its political subdivisions, and their instrumentalities, except for services described in 26 U.S.C. 3309(b) and in 26 U.S.C. 3306(c) (other than service described in paragraph (7) thereof). The exceptions to coverage of governmental employee permitted by 26 U.S.C. 3309(b) and 3306(c) do not include exceptions such as those found in RSA 282:1, H(4) (a), (b), (t), and (u) and RSA 382:1, N(1)(a). The New Hampshire law therefore fails to conform to the requirements of FUTA.

4. For the reasons stated above the connection with coverage of services performed in the employ of governmental entities, New Hamsphire law also fails to provide fully for the coverage required by Sections 3304(a)(6)(A), 3309(a)(1), and 3306(c)(8) of FUTA for services in the employ of tax-exempt, nonprofit organizations.

5. Since the Department of Labor has withdrawn the issue involving the "immediate deposit" requirement found in Section 303(a)(4) of the Social Security Act, 42 U.S.C. § 503(a)(4), and Section 3304(a)(3) of FUTA, 26, U.S.C § 3304(a)(3), it is unnecessary to make any conclusions of law with respect to that issue.

6. Section 303(a)(1) of the Social Security Act, 42 U.S.C § 503(a)(1), referred to as the "methods of administration" requirement, provides in pertinent part as follows:

> Sec. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such state, approved by him under the Federal Unemployment Tax Act, includes provisions for—
>
> (1) Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

7. The legislative history of Section 303(a)(1) reveals that its purpose was to establish federally-prescribed administrative standards for the states, to insure efficiency, competence and probity in the administration of their respective unemployment compensation programs. *Report to the President of the Committee on Economic Security* 4, 18–19 (Washington: Government Printing Office, 1935).

8. The function to be performed by the Secretary of Labor under Section 303(a)(1) of the Social Seucrity Act, as amended, that is, the identification and prescription of methods of administration "reasonably calculated to insure full payment of unemployment compensation when due," is delegable to subordinate DOL officials by the terms of 1949 Reorganization Plan No. 2, Section 1. (Appendix to Title 5, U.S.C.A.)

9. This function has been delegated by the Secretary to officials of the Unemployment Insurance Service withing the Department of Labor, most recently by means of Secretary's Order 4–75, 40 FR 18515 (April 28, 1975), and Manpower Administration Order 4–75 (July 14, 1975). (DOL Exhibits 24 and 25, respectively.)*

10. Thus the Secretary of Labor, through duly authorized subordinate officials, has prescribed methods of administration under Section 303(a)(1) of the Social Security Act including requirements for a due date for payments due from employers as contributions and/or payments in lieu of contributions, adequate means of enforcing collection of payments due to the State's unemployment fund, and provisions for interest and/or penalties on delinquent payments. Such required methods of administration apply not only to private employers, but also to governmental and non-profit employers. (DOL Exhibits 19, 20, and 22.)

11. New Hampshire law, however, does not contain the above-specified methods of administration requirements with respect to reimbursing governmental and non-profit employers.

12. Section 204(a)(4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), added by Section 212 of the 1976 Amendments (Pub. L. 94–566), discontinued Federal sharing of extended benefit costs attributable to service in the employ of governmental entities, with respect to weeks of unemployment beginning after December 31, 1978. Provision for payment of extended benefits is made a requirement for State unemployment compensation laws by 26 U.S.C. 3304(a)(11). In addition, 26 U.S.C. 3304(a)(6)(B) and 3309(a)(2) require

*By Secretary's Order No. 14–75 (40 FR 54485, November 24, 1979) the name of the Office of the Assistant Secretary for Manpower was changed to the Office of the Assistant Secretary for Employment and Training and the Manpower Administration was redesignated the Employment and Training Administration. All offices deriving their name in whole or in part therefrom were also redesignated accordingly.

reimbursing employers to make payments in lieu of contributions in amounts equal to the amounts of compensation attributable under the State law to service in their employ.

13. New Hampshire law, however, at RSA 282:6, C(1), continues without amendment to provide that the liability of governmental entities to reimburse the State unemployment fund for extended benefit payments is "in an amount equal to one-half of such benefits. . . ." Therefore, New Hampshire law fails to conform to the above-cited requirements of FUTA in this regard.

14. The Federal law at 26 U.S.C. § 3304(a)(6)(A) requires a State law to provide that compensation is payable on the basis of service to which Section 3309(a)(1) applies (relating to coverage of governmental entities and nonprofit organizations) "in the same amount on the same terms, and subject to the same conditions" as compensation payable on the basis of other service subject to the State law. Such a provision is required because Congress was concerned that states could effectively dilute or nullify the new coverage by discriminating between public and private sector employees with regard to the amounts, terms and conditions of benefit entitlement. Because the NHUCL admittedly does not contain any express provision such as that described in 26 U.S.C. § 3304(a)(6)(A), it follows that the State law fails to conform to the requirement of Section 3304(a)(6)(A) of FUTA.

15. Section 3304(a)(13) of FUTA, 26 U.S.C. 3304(a)(13), requires a State law to provide for denial of unemployment compensation to professional athletes in specified circumstances between successive sport seasons. The federal provision requires that:

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training in preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

16. The sports denial provision of the New Hampshire law, RSA 282:1 O, provides as follows:

During the period between successive sports seasons no annual earnings will be available for any individual for whom 50 percent or more of his wages are for services in training, preparation to participate or participation in athletic or sports events if there is a reasonable assurance of his engaging in such performance in the next sport season. Services as parking lot attendants, ushers, ticket sellers, and cafeteria workers shall be excluded from this provision.

17. The New Hampshire provision differs from the FUTA provision in several particulars. First, the NHUCL provision refers to 50 percent of wages rather than substantially all services, as in FUTA. Second, the NHUCL provision differs from FUTA in neglecting to condition the denial on the individual's performance of such services in the first of two successive sports seasons. Third, although, the legislative history of Section 3304(a)(13) indicates that Congress intended its mandatory denial of benefits to apply only to professional athletes, the New Hampshire provision, in contrast, appears to authorize denial of benefits to individuals other than professional athletes.

18. The mere fact that the NHUCL denial provision applies more broadly than is necessary under FUTA does not alone present a conformity issue. However, the denial must be no broader than the terms of the Federal law where it applies to individuals employed by governmental entities, including schools, or by nonprofit organizations. Therefore, because RSA 282:1, O denies benefits under conditions broader than those in Section 3304(a)(13) of FUTA, it violates equal treatment to the extent such denials are applied to employees of governmental entities and non-profit organizations.

19. During the 12-month period ending on October 31, 1979, the State of New Hampshire has failed to comply substantially with the FUTA provisions requiring coverage of services in the employ of the State, its political subdivision, and their instrumentalities.[11]

20. During the 12-month period ending on October 31, 1979, the State of New Hampshire has failed to comply substantially with the FUTA provisions requiring coverage of services in the employ of tax-exempt, non-profit organizations.[12]

21. During the 12-month period ending on October 31, 1979, the State of New Hampshire has failed to comply substantially with certain methods of administration required under Section 303(a)(1) of the Social Security Act. Specifically, the state has failed to enforce due dates, penalties and/or interest for delinquent payments, and adquate means of collecting payments due from reimbursing employers.[13]

22. During the 10-month period ending on October 31, 1979, the State of New Hampshire has failed to comply substantially with the FUTA requirement that the State, its political subdivisions, and their instrumentalities shall be liable as reimbursing employers for the full cost of extended benefits paid which are attributable to services in their employ.[14]

23. During the 12-month period ending on October 31, 1979, the State of New Hampshire has failed to comply substantially with the equal treatment requirement of Section 3304(a)(6)(A) of FUTA.[15]

24. During the 12-month period ending on October 31, 1979, the State of New Hampshire has failed to comply substantially with the equal treatment requirement of Section 3304(a)(6)(A) of FUTA with respect to services performed by sports personnel.[16]

Findings of Fact With Respect to Constitutional Issues

In view of the stipulation of the parties that the constitutional issues in the current proceeding are substantially the same as those raised in the 1978 New Hampshire conformity proceeding; and in view of the fact that the parties rely upon the record of the 1978 conformity proceeding the support their respective positions relating to constitutional issues, the findings of fact relating to this element of the case, as articulated in the October 30, 1978 decision of the Secretary, are hereby incorporated by reference. (DOL Exhibit 18.)

Conclusions of Law With Respect to Constitutional Issues

Under the provisions of Rule 14 of the Rules of Procedure and other relevant precedents the undersigned has no authority to formulate conclusions of law regarding the constitutionality of any federal statute.[17] **

I have carefully studied the evidence of record and considered all of the arguments presented with respect to the issues. It is my conclusion that the findings of fact and conclusions of law of the Judge, set forth above, are supported by the record, are in accordance with applicable law, and are proper, and I adopt them as my own.

Accordingly, I find that the New Hampshire Unemployment Compensation Law fails to conform to the provisions of the Federal Unemployment Tax Act, as amended.

**Footnotes 11, 12, 13, 14, 15 and 16 in the quoted paragraphs above refer to Rec. Dec., N. 1 which stated that because the hearing was to conclude September 7, 1979 all references to periods ending on October 31, 1979 are deemed to refer to shorter periods ending on September 7, 1979. Footnote 17 cited to *Oestereich v. Selective Service System*, 393 U.S. 233, 242 (1968) (Harlan, J., concurring).

with respect to each of the issues listed in the Notice of Hearing at 44 F.R. 48393 (August 17, 1979), as modified by agreement of the parties at the Pre-Hearing Conference on August 30, 1979 and that the State of New Hampshire has failed to substantially comply with federal law requirements forming the basis for this proceeding.

Dated at Washington, D.C. this 31st day of October, 1979.

Ray Marshall,

Secretary of Labor.

U.S. Department of Labor v. State of Alabama Department of Industrial Relations and State of Nevada Employment Security Department

Conformity Proceeding

Decision of the Secretary

The unemployment compensation laws of the State of Alabama and Nevada must be determined by the Secretary of Labor, by October 31, 1979, to be in conformity with the requirements of the Federal Unemployment Tax Act (26 U.S.C. 3301–3311), hereinafter referred to as FUTA, in order to be certified under section 3304(c) of FUTA and thereby to have those States receive the benefits for themselves and their inhabitants provided by Title III of the Social Security Act, 42 U.S.C. 501–504, and FUTA. Such benefits include federal grants for the administration of their unemployment compensation laws as well as tax credits for private employers within the states. The purpose of this proceeding is to determine whether the Alabama and Nevada unemployment compensation laws are in conformity and/or in substantial compliance with the requirements of FUTA.

The issue is whether FUTA requires State unemployment compensation laws to provide coverage for employees of non-profit church-related elementary and secondary schools. Alabama and Nevada take the position that it does not. It is the position of the U.S. Department of Labor, hereinafter referred to as the Department or USDOL, that the unemployment compensation laws of such States are not in conformity with the requirements of FUTA, and/or that such States are not in substantial compliance with such requirements, because of the lack of such coverage.

Pursuant to the request of the States of Alabama and Nevada, a hearing was held before an Administrative Law Judge, hereinafter sometimes referred to as the Judge, at which an opportunity was afforded to examine witnesses and introduce documentary evidence relating to the issues. Thereafter, parties and interested parties filed briefs and presented oral argument.

On October 11, 1979, the Judge issued a recommended decision in the matter, in which he found that Alabama and Nevada are in compliance with the requirements of FUTA, and he recommended that I so determine.

The U.S. Department of Labor has filed exceptions to the Administrative Law Judge's recommended decision. It contends that the Judge erred in finding that the Alabama and Nevada unemployment compensation laws are in conformity with the requirements of FUTA and that those States are in compliance therewith.

An outline of some of the statutory background would be helpful in the consideration of the issue. During the depression of the 1930's, when unemployment exceeded 25 percent of the work force in the nation, Congress enacted legislation which was the forerunner of FUTA to provide for the establishment of unemployment compensation programs in the States. Beginning in the mid-1950's, there was a steady expansion of unemployment insurance coverage under the Federal-State unemployment compensation program. For example, originally employers of eight or more employees were covered. In 1954, coverage was extended to employers of four or more employees.

The Employment Security Amendments of 1970 further extended coverage to employers of one employee. In addition, they amended the Internal Revenue Code of 1954 by adding subsections (6) (A) and (B) to the existing section 3304(a), and a new section 3309. The new section 3304(a)(6)(A) required State laws to cover, for compensation purposes, employees of nonprofit organizations and employees of State hospitals and institutions of higher education.

Subparagraph (b) of the new section 3309 permitted the States to exclude, *inter alia,* from the mandatory coverage of nonprofit organizations and State hospitals and institutions of higher education, service performed:

(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a school which is not an institution of higher education;

See 84 Stat. 697–698; 26 U.S.C. 3309(b)(1), (b)(2) and (b)(3) (1970).

What followed thereafter is described in the Memorandum of Points and Authorities submitted by the USDOL, hereinafter sometimes referred to as USDOL Memo, at pages 9–11 (footnotes are omitted):

Even the increasingly expanded Federal-State Unemployment Compensation Program, however, proved inadequate in the 1974–75 economic downturn. Late in 1974, the Congress passed two remedial laws as temporary measures. The Emergency Unemployment Compensation Act of 1974 (Pub. L. No. 93–573, 88 Stat. 1869) was similar to its predecessor, the Emergency Unemployment Compensation Act of 1971, and further extended benefits for individuals in the regular unemployment compensation programs. The Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. No. 93–567, 88 Stat. 1845, enacted, in Title II, a Special Unemployment Assistance (SUA) Program. This program was intended to cover an estimated 12 million workers who were not covered by the regular unemployment compensation laws, including state and local government employees, agricultural workers, domestic employees and employees of nonprofit elementary and secondary schools. The SUA program was administered by state unemployment compensation agencies as the agents of the Secretary of Labor, with the federal government assuming the costs of benefits and of program administration.

The SUA program was, in effect, replaced by the Unemployment Compensation Amendments of 1976, Pub. L. No. 94–566, 90 Stat. 2667. These amendments were designed to provide coverage under the permanent Federal-State Unemployment Compensation Program for substantially all the nation's wage and salary earners and thereby to eliminate the need for the temporary SUA program. H.R. Rep. No. 755, 94th Cong. 1st Sess. 1 (1975). *The 1976 amendments specifically eliminated the exclusion for service performed in the employ of nonprofit elementary and secondary schools which had been added in 1970 as part of the new § 3309(b) of the Internal Revenue Code of 1954.* (Italics supplied.)

The question is whether the 1976 amendment repealing the exemption for nonprofit elementary and secondary schools contained in section 3309(b)(3) of FUTA requires the coverage of church-related schools.

The States of Alabama and Nevada contend, among other things, that under the plain language of section 3309(b)(1) of FUTA (26 U.S.C. 3309(b)(1)) church schools are exempt from coverage under FUTA; that the plain language of a statute is controlling unless the legislative history reveals clear evidence of a contrary intent; that church schools are exempt under section 3309(b)(1)(A) because they generally have no separate legal status from their governing church,

and because they are an integral part of their governing church; that church schools and others not technically a legal part of their church, are also excluded from coverage under section 3309(b)(1)(B) because they are operated primarily for religious purposes. Alabama and Nevada argue that the pertinent legislative history does not indicate Congress intended employees of church schools to be covered under FUTA. It is their position that such coverage would violate the freedoms guaranteed to religious groups under the First and Fourteenth Amendments to the Constitution; that it would involve excessive governmental entanglement in church affairs, and therefore would be unconstitutional under the tests established by the Supreme Court.

The provisions of 26 U.S.C. 3304(a)(6)(A) and 3309, as amended by the 1976 Amendments, particularly the amendment repealing the exemption for nonprofit elementary and secondary schools provided in section 3309(b)(3), have been interpreted by the U.S. Department of Labor as requiring unemployment compensation coverage of all services performed in the employ of all private nonprofit elementary and secondary schools, including church-related schools, with certain exceptions as provided in 26 U.S.C. 3309(b). In accordance with USDOL's interpretation, the only services performed in church-related elementary and secondary schools recognized as being within the scope of the exemption permitted by section 3309(b)(1) of FUTA, (aside from the permitted § 3309(b)(2) exceptions) are those strictly church duties (as distinguished from school duties) performed by church employees at the schools pursuant to their church responsibilities. (See USDOL Memo, pp. 1–2; Exceptions, pp. 11–13.)

The position of the Department of Labor, as presented on pages 11 through 22 of its Memorandum of Points and Authorities, including the footnotes incorporated therein, is set out below.

I

The Legislative History of FUTA Supports the Department's Interpretation That All Church-Related Schools Are Now Subjects to Coverage

While FUTA on its face gives little guidance concerning the interrelation between the repeal of the 1970 § 3309(b)(3) school exemption and the retention of the § 3309(b)(1) religious organization exemptions, its history and remedial purposes militate strongly in favor of construing the statute to cover *all* elementary and secondary schools, including those organized by the churches in Alabama and Nevada (and all other states), within state unemployment insurance coverage.

A. The Unemployment Compensation Amendments of 1976 represent the culmination of congressional efforts to provide virtually universal unemployment insurance coverage and should be construed in that light

Since the original enactment of the Federal-State Unemployment Compensation Program, Congress has followed an unbroken path towards expansions of unemployment insurance coverage. This movement accelerated in the 1970's and culminated in the 1976 Amendments which provide coverage under the permanent Fedreral-State Unemployment Compensation Program for substantially all of the nation's wage and salary earners. H.R. Rep. No. 755, 94th Cong. 1st Sess. 1 (1975).

This steady progress towards universal unemployment insurance coverage, together with the remedial nature of FUTA, trigger the application of several well-accepted rules of statutory construction, including the requirement that a statute will be interpreted in light of the purposes it seeks to achieve and the evils it seeks to remedy. *Fasulo* v. *United States*, 272 U.S. 620 (1926); *Holy Trinity Church* v. *United States*, 143 U.S. 457–472 (1892). Statutes must be given effect in accordance with the purpose manifested by Congress. *United States* v. *Ohio*, 354 F.2d 549, 555 (6th Cir. 1966)*[13]; *Commissioner of Internal Revenue* v. *Bilder*, 369 U.S. 499 (1962). This directive takes on particular significance in the context of the instant case since remedial social legislation is to be construed liberally in favor of the workers whom it was designed to protect. *Wirtz* v. *Ti Ti Peat Humus Co.*, 373 F.2d 209, 212 (4th Cir. 1967)*. See also, *United States* v. *Silk*, 331 U.S. 704 (1947); *Phillips Inc.* v. *Walling, 324 U.S. 490 (1945); Israel-British Bank (London) Ltd.* v. *F.D.I.C.*, 536 F.2d 509, 513 (2d Cir. 1976). Finally, there is a requirement that remedial legislation be broadly construed and that exceptions be narrowly applied. *Phillips Inc.* v. *Walling, supra*, at 493. See also, *Korherr* v. *Bumb*, 262 F.2d 157, 162 (9th Cir. 1958); *Hamblen* v. *Ware*, 526 F.2d 476, 477 (6th Cir. 1975). [14]

B. Congress intended the unemployment compensation amendments of 1976 to extend unemployment insurance coverage to services performed for all elementary and secondary schools

In order to properly understand the objective behind the 1976 Amendments, it is necessary to briefly review the 1970 Amendments.

The Employment Security Amendments of 1970, by adding new language in 26 U.S.C. §§ 3304(a)(6), 3306(c)(8), and 3309(a)(1)(A), required State-law coverage of individuals employed by nonprofit organizations, including institutions of higher education. The legislative reports which accompany the amendments unmistakably show that Congress was concerned about the need of employees of church-related schools for protection against wage loss resulting from unemployment and intended to bring individuals employed in nonprofit institutions of higher education, including those operated by religious institutions under program coverage. H.R. Rep. No. 612, 91st Cong., 1st Sess. 11 (1969).

In fact, Congress, quite explicitly limited the availability of the § 3309(b)(1) exemption as applied to institutions of higher education. See H.R. Rep. No. 612, 91st Cong. 1st Sess. 44 (1969), and S. Rep. No. 752, 91st Cong. 2d Sess. (1970) at 48–49.[15] Congress clearly expected that the "operated primarily for religious purposes" language contained in § 3309(b)(1)(B) would be narrowly construed, preventing its application to educational institutions of higher education. The Department of Labor has followed the congressional mandate for coverage of private nonprofit organizations, including institutions of higher education, and consistently interpreted the 1970 Amendments to require State law coverage of *all* institutions of higher education except for the narrow category of seminaries and novitiates.

In light of Congress' intention in 1970 to bring religiously affiliated colleges and universities within coverage, and in the face of the Department's subsequent adoption of this interpretion, Congress' description, in 1976, of the objective behind the repeal of § 3309(b)(3) is made even more informative. See H.R. Rep. No. 755, 94th Cong., 1st Sess. 56 (1975)

[13] The use of an asterisk (*) denotes the leading case in each line of cases cited for a single proposition.

[14] Under an analogous remedial statute, the Fair Labor Standards Act, it has been held that exemptions are to be narrowly construed against the employer *Schultz* v. *Louisiana Trailer Sales, Inc.*, 428 F.2d 61, 67 (5th Cir. 1970). *Arnold* v. *Ben Kanowsky, Inc.*, 361 U.S. 388* (1960); *Mitchell* v. *Kentucky Company*, 359 U.S. 290, 295, 79 S. Ct. 756, 759, (1959); *Yogurt Master, Inc.* v. *Goldberg*, 310 F.2d 53, 55 (5th Cir. 1962).

[15] Congress' references to "separately incorporated" institutions in the reports were clearly examples of the delineation of coverage, and were not intended as a full explanation of the extent of such coverage.

and S. Rep. No. 1265, 94th Cong. 2d Sess. 2 (1976).

Any lingering doubt concerning Congress' desire to extend coverage to *all* elementary and secondary schools is satisfied by reference to the statistical data cited by Congress regarding the anticipated effect on the 1976 Amendments. The Senate Report, S. Rep. No. 1265, 94th Cong., 2d Sess. 8 (1976), estimated the number of new employees who would be covered as a result of the repeal of § 3309(b)(3) at 242,000. This figure is essentially identical to the then available best estimate of the total number of employees in *all* nonprofit elementary and secondary schools.[16]

Without the inclusion of employees of church-related elementary and secondary schools, the figure would have been substantially less than 242,000 because the staff of church-related elementary and secondary schools comprise more than half of the staff of all non-public elementary and secondary schools in the United States.[17]

Thus, in setting forth the projected impact of the repeal of § 3309(b)(3), Congress could only have contemplated that the repeal of § 3309(b)(3) would bring *all* elementary and secondary schools within FUTA coverage. Considering the total absence of any indication that Congress intended an alternative interpretation, and noting particularly the necessity that the exceptions to coverage be construed narrowly, the Department's construction of the Act is virtually mandatory.

II

The General Principle of Construing Statutes To Avoid Unnecessary Constitutional Decisions Is Inapplicable in This Case

The general principle that a court should construe a statute to avoid unnecessary constitutional decisions is inapplicable in this case, because the Department's interpretation that due to the elimination of the exemption formerly provided in 26 U.S.C. § 3309(b)(3), church-related schools are now subject to unemployment insurance coverage is correct in light of the legislative history discussed above and, in any event, does not present any constititutional infirmities. There are two reasons why the Department's interpretation does not give rise to any constitutional problems.

First, unemployment insurance coverage of church-related elementary and secondary schools does not create excessive entanglements. To the contrary, the necessary involvement between such schools ands the government would be minimal. While certain records would have to be maintained and determinations of eligibility for benefits would have to be made, there would be no need to become involved in such issues as resolving disputes as to church doctrines in order to resolve claims for benefits. See the testimony of Mr. Bernard Street (Transcript, pp. 107–108). With respect to this point it is noteworthy that the First Amendment does not prohibit all involvement between church and state, but merely entanglement which is deemed *excessive. Walz* v. *Tax Commission,* 397 U.S. 664 (1970). Moreover, not all procedures for surveillance and auditing result in excessive government entanglement with religion. See, e.g., *Wolman* v. *Walters,* 433 U.S. 229 (1977); *Committee for Public Education* v. *Levitt,* 461 F. Supp. 1123 (S.D. N.Y. 1978). If the surveillance and monitoring occur primarily at the governmental level and do not require interference with the internal operations of the schools, the entanglement is not excessive. *Committee for Public Education* v. *Levitt, supra.*[18] Consistent with the cases just cited, the amount of involvement between government and churches resulting from an adoption of the Department's interpretation of 26 U.S.C. § 3309(b) cannot reasonably be viewed as rising to the level of excessive entanglements.

The second reason why the Department's interpretation of § 3309(b) does not present constitutional infirmities is that, with one exception not here relevant,[19] FUTA does not *mandate* that state unemployment insurance laws deny any individuals unemployment benefits. Thus, while 26 U.S.C. 3304(a)(10) permits the state to provide for the denial of benefits to individuals discharged for misconduct in connection with their work, etc., the state is not *required* to provide for such a denial.[20]

Thus, even assuming, *arguendo,* that the extension of coverage to church-related elementary and secondary schools would result in excessive entanglement as a result of current provisions of state law regarding the denial of benefits for misconduct, etc., the above factor, we submit, precludes a holding that the Department's interpretation of FUTA is facially unconstitutional on entanglement grounds since the Departments interpretation does not necessarily result in the type of entanglements about which Alabama and Nevada are so concerned. It is in this context that it is also appropriate to consider the recent decision in *N.L.R.B.* v. *Catholic Bishop of Chicago,* 99 S. Ct. 1313 (1979) in which the court found that the National Labor Relations Act (NLRA) coverage of parochial schools raised "serious constitutional questions" (albeit without finding unconstitutionality). The Court expressed two concerns in that case, one of which can be best described as involving the "chilling effect" of mandatory collective bargaining on the ability of clerical authorities to administer their schools and the other relating to the potential problems created by requiring the Board to adjudicate employer/employee disputes in a sectarian school setting. Unlike the situation in the *Catholic Bishop* case, *supra,* unemployment insurance coverage does not necessitate state involvement in the development of curriculum, faculty standards, working conditions or any other aspect of school operations. In fact, the unemployment insurance system would generally only be triggered *after* an employee had been terminated and his or her connection with the school severed.

To the extent that it may be argued that the second area of the Supreme Court's concern regarding unfair labor practice adjudications in *Catholic Bishop, supra,* raises some possible parallels with certain aspects of the unemployment insurance system, it must be recognized that these problems arise

[16] At the September 26, 1979 hearing in this matter it was stipulated between the parties that the 242,000 figure was supplied to Congress by DOL. (Transcript p. 86). Moreover, the testimony of Mr. Louis Benenson at that hearing establishes that the 242,000 figure clearly included all employees of church-related elementary and secondary schools. (Transcript, pp. 69–73) See also DOL Exhibits 6–8.

[17] According to the Census Bureau's *Statiscal Abstract of the United States* (1977 ed.) there were 261,000 full-time teachers in the nonprofit elementary and secondary schools in 1975, of which 150,000 were in Roman Catholic schools, pp. 145, 147, tables 235, 237. * * * Compare DOL Exhibits 6–8.

[18] These very same arguments were recently made on behalf of the Archdiocese of Milwaukee, et al. as intervenors in *Alice Decker, et al.* v. *USDOL, et al.,* E.D. Wisconsin, C.A. No. 78–C–634 in a memorandum in support of the intervenors' motion for reconsideration and amendment of the court's Decision and Order enjoining the state and federal administrators of Title II of the Comprehensive Employment and Training Act of 1973, as amended, 29 U.S.C. § 841, *et seq.* (CETA), from funding CETA positions in church-related elementary and secondary schools.

[19] Section 3304(a)(6)(A) of FUTA precludes payment of benefits to teachers unemployed between academic terms under certain circumstances.

[20] See section 25–4–78–(3), Code of Alabama 1975, Alabama Exhibit, para. 79, and section 612.385 of Nevada Revised Statutes (1979) and Nevada Exhibit A, paragraphs 40 through 44.

because of state law provisions and not because of the Department's interpretation of § 3309(b) of FUTA. The point to be made is simply that potential entanglements cannot be used to negate unemployment insurance coverage for former employees since coverage itself does not *inevitably* create any entanglements.

The *Catholic Bishop* case, *supra*, is further distinguishable in that despite coverage by a state unemployment insurance law, the church school employer remains free to employ or not not employ any individual it chooses on whatever basis it desires. The only impact of unemployment insurance coverage is that some of these decisions will now have some financial impact, albeit an impact no greater than that borne by private non-sectarian schools. The concept that the first amendment protects both the practice of religion and also spares one the financial burdens of such practice was rejected in *Braunfield* v. *Brown*, 336 U.S. 599 (1961) where the Court concluded that a statute could not be invalidated on free exercise grounds merely because it made the practice of religion more expensive.

Nor is there any basis whatsoever for DIRSA's [the Department of Industrial Relations of the State of Alabama's] and NESD's [the Nevada Employment Security Department's] apparent belief that employer/employee relations of church-related schools in Alabama and Nevada respectively are constitutionally immune from such impact. Clearly, they can claim no exemption from child labor laws, *Prince* v. *Massachusetts*, 321 U.S. 158 (1944) or minimum wage requirements, *Mitchell* v. *Pilgrim Holiness Church Corp.*, 210 F. 2d 879 (7th Cir. 1954), certiorai denied, 347 U.S. 1013 (1954). Moreover, DIRSA and NESD acknowledge the authority of the government to require and the obligation of church-related schools in Alabama and Nevada respectively to maintain a safe workplace. Alabama Exhibit A, para. 67; Nevada Exhibit A, para. 12.

The right of individuals to send their children to religiously sponsored schools has been established for more than fifty years. *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). The Department seeks no alteration in that principle. The Department's interpretation of § 3309(b) of FUTA will not require an examination into the religious motivations or religious doctrine of church-related elementary or secondary schools or in their employment decisions. The Department's position is uncomplicated. Employees of *all* elementary and secondary schools who become unemployed are entitled to coverage. Where such school activities have been performed by the claimant section 3309(b)(1) or the equivalent state law provision is not available as an exemption because coverage of elementary and secondary school activity was intended by Congress to protect former school employees from the vicissitudes of unemployment. To conclude otherwise would be to carve out a special rule based upon religious motivation offending the Establishment Clause of the First Amendment to the Constitution.

The Department of Labor takes exception to a number of statements findings and conclusions in the Judge's recommended decision in this proceeding, as well as to his failure to make certain findings of fact. On pages 8–10 of the Department's Statement of Exceptions, herinafter referred to as Exceptions, it states:

> The primary exception which USDOL takes to Part III [of the Judge's recommended decision, on pages 4–5 thereof] stems from the conclusion expressed in the first paragraph of that section to the effect that, since "(e)ssentially all the facts relevant to the issues presented have been stipulated by the parties . . . no recommended findings need be made." While the parties did stipulate as to many facts, additional relevant evidence was introduced at the time of the evidentiary hearing as to which the parties did not stipulate. Specifically, this evidence primarily pertained to both (a) the development by USDOL of the 242,000 figure contained in Senate Report No. 1265, 94th Cong., 2d Sess. 8 (1976), and which was used to explain the estimated number of additional elementary and secondary school employees who would be covered as a result of the repeal of FUTA § 3309(b)(3); and (b) the fact that it is unnecessary to get involved in church doctrine in determining whether a former employee of a church-related school is entitled to benefits. Accordingly, USDOL takes exception to the absence of such recommended findings and urges that the Secretary correct this error by adopting the following findings of fact:
>
> (1) Prior to the enactment of the Unemployment Compensation Amendments of 1976, USDOL, at the request of Congressional staff, prepared an estimate of the total number of employees of all non-profit elementary and secondary schools within the United States. The estimate so prepared was 242,000. Tr., 67–73. DOL Exhibits 6–8.
>
> (2) This 242,000 figure represented a statistical determination of the number of non-profit elementary and secondary school employees who were not covered under FUTA prior to the 1976 Amendments. Tr., 75.
>
> (3) USDOL's 242,000 estimate of the total number of all non-profit (church-related and non-chruch related) elementary and secondary school employees was furnished by USDOL to staff persons in Congress. Tr., 86.
>
> (4) In determining the eligibility of a former employee of a church-related elementary or secondary school for Supplemental Unemployment Assistance it is unnecessary to determine that which constituted church doctrine an that which did not. Tr., 104–107.
>
> (5) In determining the eligibility of a former employee of a church-related institution of higher education for unemployment compensation it is similarly unnecessary to resolve church doctrine. Tr., 104–107.
>
> (6) In determining the eligibility for unemployment compensation of a former employee of a church-related school who either voluntarily quit or who was discharged for misconduct it is unnecessary to draw a determination as to what constitutes the actual doctrine of the church. Tr., 108. See also Tr., 126–127 & 136. Rather, the relevant inquiry revolves around the understanding of the parties and the intent of the claimant. Tr., 108 & 122–123.
>
> (7) In an unemployment compensation case the person deciding the case does not establish or try to force any change to an employer's work rules. Tr., 123. Similarly, a hearing officer in such a case cannot order reinstatement of the employee in the event a work rule is found to be unjustified. Rather, the only remedy is the grant of benefits. Tr., 124.

In addition, USDOL takes exception to the generalized summary of the stipulated facts concerning the Roman Catholic, Baptist and Lutheran elementary and secondary schools in that the summary as to each of those groups of church-related schools fails to recognize that such schools serve the same basic educational purposes and have the same basic academic structure and courses of instruction as non-church-related elementary and secondary schools. Alabama Exhibit A, para. 33, 34, 45, 46, 66, 67, 71; Nevada Exhibit A, para. 11, 12, 17, 32. Further, this summary fails to recognize that these church-related schools are subject to State and local government fire, health and safety requirements. Alabama Exhibit A, para. 47 & 67.

In my opinion, the above-quoted exceptions of the Department are well-founded and valid. I find that the findings of fact recommended by the Department, numbered 1–7, quoted above, are supported by the record and are proper, and I adopt them as my own.

The Department takes exception to the conclusions expressed by the Judge in Part V, pages 7–9 of his recommended decision for several reasons, discussed on pages 13–18 of its Exceptions which are set out below, including the footnotes incorporated therein.

> First, little or no weight should be afforded the three cases cited as precedent in this section. This is so because the USDOL was not a party to either *Trinity Evangelical Lutheran Church* v. *Department of Industrial Relations*, Case No. CV 78 500325, Cir. Ct. Mobile County, Alabama (January 27, 1979) or *Roman Catholic Church* v. *State of Louisiana*, No. 219, 660, 19th Jud. Dist. Ct.,

East Baton Rouge Parish, La. (August 31, 1979), and thus did not have the opportunity to present relevant evidence or even its arguments to those courts. While USDOL was a party in *Grace Brethern v. State of California*, Case No. CV 79-93, USDC CD Calif. (September 21, 1979) the decision rendered in that case was simply on plaintiffs' motion for a preliminary injunction. Not only has there not yet been a final hearing in *Grace Brethern*, but consideration is currently being given to filing an appeal from that interlocutory order.

In any event, with respect to these three decisions, it is important to realize that to a great extent the cases went off on constitutional tangents which, in the present proceeding, are both unauthorized and unwarranted.[7] Moreover, by adopting those three decisions here in their entirety, the Administrative Law Judge has inexplicably exceeded his authority by making conclusions of law as to the constitutionality of USDOL's interpretation of § 3309 of FUTA. See Rule of Procedure 14(b), 44 FR 47649 (August 14, 1979).

The remaining USDOL exceptions to Part V relate to four "additional comments" contained therein.

With respect to the first additional comment it need only be noted that the Recommended Decision fails to recognize that under USDOL's interpretation of § 3309 of FUTA it is appropriate to first determine the identity of the employing organization in order to determine the applicability of the § 3309(b)(1) exemption and, if the employer may be both a church and a church-related school, to thereafter determine whether the services performed for such employer are church duties or church school duties. If the latter, the § 3309(b)(1) exemption is inapplicable.

The second additional comment essentially states that no reliance should be placed upon the reference in the legislative history to the 242,000 figure previously discussed. USDOL takes exception to this conclusion for the reason that the record reflects the finding stated by Congress that the additional coverage occasioned by the deletion of the old § 3309(b)(3) exemption would amount to 242,000 employees. That number, as evidenced by the record, represented USDOL's best estimate of the total of all (church-related and non-church-related) non-profit elementary and secondary school employees. If any presumption is to be drawn with respect to Congress' understanding of what this figure represented, that presumption must be that Congress considered the testimony and data it received and knew what it said. Any other presumption would be improper. Furthermore, it is apparent from the final sentence of this second additional comment that the Administrative Law Judge's confusion as to USDOL's position in this case stems from his inability to distinguish between "church functions" and "church-school functions." It is only services related to those latter functions that USDOL contends are covered.

USDOL takes exception to the third additional comment for the reason that the legislative history to the 1976 Amendments to FUTA clearly reflects that Congress intended to extend coverage to all "nonprofit elementary and secondary schools" by deleting the exemption previously applicable to such schools. See USDOL's Memorandum of Points and Authorities, pp. 11-16. If Congress had intended to limit the extension of coverage to only that small proportion of non-profit elementary and secondary schools which are non-church-related,[8] it is only reasonable that they would have so specified. This inference is strengthened by the fact that coverage of church-related institutions of higher education had been covered since the time of the 1970 Amendments. Even more support for this conclusion can be found in the fact that all non-profit elementary and secondary school employees not otherwise covered by State laws were covered by SUA, and by the fact that the Unemployment Compensation Amendments of 1976 were designed to "eliminate the temporary Special Unemployment Assistance Program" and extend "permanent" coverage to "substantially all the workers . . . covered by SUA." H.R. Rep. No. 94-755 at 17.

Finally, USDOL takes exception to the fourth additional comment for the reason that there is no support for the conclusion expressed that the Department's construction of § 3309(b) is inconsistent with other governmental interpretations of the term "church" used elsewhere in the Internal Revenue Code. Nowhere in the Internal Revenue Code is there a definition of the term "church" which includes church-related elementary and secondary schools. Not surprisingly, the regulation relied upon as authority for the proposition stated (26 CFR § 1.1508-1) is non-existent.[9]

After considering all the evidence and arguments concerning the issues, it is my conclusion that the views expressed by the Department of Labor in its Memorandum of Points and Authorities and in its exceptions to the Judge's decision are correct, for the reasons and on the basis of the authorities indicated therein. FUTA, as amended by the 1976 amendments, requires State unemployment compensation laws to provide coverage for employees of non-profit church-related elementary and secondary schools. The legislative history of the pertinent statutes shows that Congress intended to cover such schools under FUTA. Settled principles of statutory construction support such coverage, particularly the rules that remedial social legislation should be liberally and broadly construed as to coverage so as to accomplish its purpose and that exemptions from such statutes should be narrowly construed. I believe that covering such schools under FUTA does not create excessive governmental entanglement with religion and is within the limits of government regulation provided by the Constitution.

Accordingly, I find that the Alabama and Nevada unemployment compensation laws fail to conform to the provisions of the Federal Unemployment Tax Act, as amended. In accordance with the last sentence of section 3304(c) of that Act (26 U.S.C. 3304(c)) I find that those States have failed to amend their unemployment compensation laws so that they contain each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, specifically the provision required by reason of the enactment of amendments to section 3309(b) of FUTA. I also find that Alabama and Nevada have, with respect to the 12-month period ending on October 31, 1979, failed to comply substantially with that provision.

Dated at Washington, D.C. this 31st day of October, 1979.

Ray Marshall,

Secretary of Labor.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1954

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for th 12-month period ending October 31, 1979, in regard to the unemployment compensation laws of those States which heretofore have been approved

[7] See Mr. Streett's testimony at the evidentiary hearing, TR., 103-129, to the effect that in determining a claimant's eligibility for unemployment compensation it is unnecessary for the State to become involved in church doctrine. However, assuming, *arguendo*, that there do exist certain entanglements between covered church-related schools and the State as a result of its administration of its unemployment compensation law, it does not necessarily follow that such State involvement infringes upon the First Amendment rights of church-related schools. See *USDOL's Memorandum of Points and Authorities*, pp. 17-18. See also the decision in *Stewart, et al. v. Commissioner*, U.S. Tax Court, No. 1332-78 (July 31, 1979) and *Hatcher v. Commissioner*, U.S. Court of Appeals, Tenth Circuit, No. 78-1883 (July 27, 1979). In each of these cases there was a governmental inquiry into the religious beliefs of the taxpayer and of the religious sect in order to determine whether the taxpayer qualified for an exemption on religious grounds from the self-employment tax. In neither case did the court find a First Amendment problem. These cases therefore illustrate that even where there is an inquiry into the religious tenets of a person and/or a particular sect, there is no violation of the First Amendment so long as the provision in question has a secular purpose and it does not foster excessive government entanglement with religion.

[8] Fewer than 20 percent of the total of all non-profit elementary and secondary school employees are employed by non-church-related schools. DOL Exhibit 1, pg. 1.

[9] If the reference was intended to be to 26 CFR § 508-1(a)(3)(a) it is inapposite since that regulation clearly does not define "church" as including church-related elementary and secondary schools.

under the Federal Unemployment Tax Act.

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

The States of Alabama, Nevada, New Hampshire, and Pennsylvania are not included in the foregoing list of certified States, because of my findings made pursuant to Section 3304(c) of the Internal Revenue Code of 1954, that the unemployment compensation laws of those States do not contain each of the provisions required of State unemployment compensation laws by Section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)) and/or that they have failed to comply substantially with any such provision. This does not constitute a present withholding of the certifications of those States, however, solely because of the provisions of Section 3310(d) of the Internal Revenue Code of 1954 (26 U.S.C. 3310(d)), pursuant to which a certificaiton may not be withheld until 60 days after the Governor of the State is notified of my findings or until the State has filed a petition for review of such action, whichever is earlier. In addition, if a petition for review is filed by the State, my action is stayed for a period of 30 days thereafter, and the court may grant a further stay or other interim relief to preseve status or rights pursuant to Section 3310(d).

Signed at Washington, D.C. this 31st day of October, 1979.

Ray Marshall,

Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1954

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending October 31, 1979.

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
NewJersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

The unemployment compensation laws of the States of Alabama, Nevada, New Hampshire, and Pennsylvania are not included in the foregoing list of certified State laws, because under Section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)) the unemployment compensation law of a State may not be certified pursuant to that section unless the State is certified pursuant to Section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)). Because of my action today with respect to the certification of those States pursuant to Section 3304(c) of the Internal Revenue Code of 1954 and the effect thereon of Section 3310(c) of the Code, this document does not constitute at the present a withholding of certification for 1979 in the case of the unemployment compensation laws of the States of Alabama, Nevada, New Hampshire, and Pennsylvania.

Signed at Washington, D.C. this 31st day of October, 1979.

Ray Marshall,

Secretary of Labor.

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Federal Register

Tuesday
November 6, 1979

Part XIII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program Outreach Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[Amdt. No. 143]

Food Stamp Act of 1977; Outreach

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This final rulemaking sets the requirements for implementing the Outreach provisions of the Food Stamp Act of 1977. These rules specify requirements for informing low-income households about the availability, eligibility requirements, and benefits of the Food Stamp Program.

EFFECTIVE DATE: November 6, 1979.

FOR FURTHER INFORMATION CONTACT: Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. (202) 447-8982.

SUPPLEMENTARY INFORMATION:

Introduction

On April 10, 1979, the Department published a comprehensive and detailed proposal concerning the implementation of the outreach provisions of the Food Stamp Act of 1977 (44 FR 21541-21554). The Department explicitly invited careful public scrutiny of that proposal and encouraged detailed written criticism and comment.

This preamble articulates the basis and purpose behind significant changes from the April 10 proposal. The reasons supporting the provisions of the April 10 proposal which are unchanged by the final rules were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, or unless inconsistent with the final rules or preamble, the rationale contained in the proposal should be regarded as a basis for the pertinent final rules. Thus, a thorough understanding of the grounds for the final rules may require reference to the April 10, 1979 publication.

It should be noted that all of the comments received on the proposal were given full consideration. However, in light of the large number of comments received, not all are addressed individually in this preamble.

General Purpose

The section on general purpose, which contained the definition of outreach, received 8 comments. These comments indicated a need for further clarification of the Department's position with respect to noninformational outreach. Two commenters interpreted this section to mean that State agencies must provide transportation to food stamp participants. Other comments expressed confusion about the reasons for making the distinction between informational and noninformational activities and about what noninformational outreach would be required. As explained in the preamble of the April 10 proposal, the provisions concerning duplication of noninformational activities was included primarily because the Congress wanted to avoid paying two different agencies to perform the same noninformational activities in the same place at the same time. For example, if a community action agency has received Community Services Administration (CSA) funding to provide transportation to food stamp participants in a given county, the State agency would not be reimbursed by the Department for providing transportation to participants of the same county. Two State agencies requested that noninformational outreach not be required. While the Department believes that noninformational techniques may in some cases be as important in reaching the very needy as informational techniques, the regulations did not mandate specific noninformational activities. The final rule makes it clear that FNS will fund noninformational outreach conducted by State agencies, but only to the extent such activities are not duplicated by noninformational services provided by federally funded community action agencies (CAA's).

Minimum Requirements

The section on volunteers received 41 comments indicating a desire for revisions. Four State agencies stated that a mandate to recruit volunteers was burdensome since such recruitment depends on the cooperation of other agencies. Four more State agencies and one FNS Regional Office stated that national support was necessary to ensure success in this area. Therefore, the requirement for volunteer recruitment was modified slightly to reflect the lack of control State agencies have over cooperation of other agencies. The final regulations require State agencies "to actively attempt to recruit volunteers. . . ." In addition, the Department will endeavor to attain national level support of other Federal agencies, such as the Department of Health, Education, and Welfare (HEW), and Department of Labor (DOL), for local level cooperation in volunteer, referral, and special effort activities. A definition of volunteer was added to this section (272.6(b)(1)(i)) in response to comments from six State agencies, two FNS Regional offices, two local agencies and one advocacy group, who either requested that volunteer be defined or whose comments indicated misunderstanding. The Department defines volunteers broadly, to allow State agencies flexibility in implementing the provision. Therefore, a volunteer can be anyone who "either under the direction of the State agency or in the course of his/her duties under the direction of a cooperating agency, performs informational or noninformational food stamp outreach activities without pay from the State agency."

Six comments from advocacy groups and government agencies expressed concern about volunteers being used as a substitute for, rather than a supplement to, the State agency's outreach efforts. The Department feels that the regulatory language makes it clear that volunteers are "to assist outreach staff in achieving the outreach program's objectives," and that no change in language was necessary. We would, however, like to stress that volunteers are to be used to supplement State agency efforts and that the ultimate responsibility for outreach effectiveness rests with the State agency.

A few comments were received which indicated a desire for more specific language regarding the recruitment, use, and training of volunteers. Since it is the Department's intention that each State agency's outreach program be designed to meet the special needs of that State, the uses and training of volunteers need to be individualized as well. However, we wish to emphasize that volunteers must receive sufficient training if they are to perform effectively, and that the training they receive must be geared to the function they will be performing. We have, therefore, added the word "appropriate" to the sentence dealing with training of volunteers.

The section concerning referrals received 49 comments, most of which indicated strong support or suggested relatively minor changes in this provision. Only two State agencies requested that we delete the requirement altogether and three others stated that referral to other programs was not a food stamp outreach function. As stated in the preamble of the April 10 proposal, the Department believes that this may be the most effective outreach activity that the State agency undertakes because of the active, one-to-one contact it affords. In addition, the basis for the Food Stamp Act of 1977 as

stated in the Declaration of Policy (Section 2) is "to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising the levels of nutrition among low-income households." The referral of food stamp applicants to other programs that may further help to raise their level of nutrition is totally justifiable in light of the intent of Congress. Moreover, the Department believes that cooperative efforts among various agencies will contribute to helping low-income households.

Four comments from State agencies and one FNS Regional Office indicated a need to clarify the referral process. The Department intends for the referrals to be active and personal. Merely leaving stacks of materials at offices dealing with low-income households will not fulfill this requirement. Applicants must be told of the availability of the other programs and directed to an office where they can file an application. Language has been added to make our intentions clear.

Additionally, language was included in final regulations to indicate that agencies cooperating in the referral system shall be offered and, when requested, provided training. While this provision is technically covered elsewhere in the regulations, the Department decided that clarification was necessary.

The Department received 74 comments regarding the requirements for printed materials, 37 of which offered suggestions for additional material contents. Our review of these revealed that some of the suggestions merited additional language. Material distributed by the State agency must contain current information and, therefore, must be updated to reflect any changes in the program. Additionally, State agencies must make printed materials available that also contain information regarding the documentation that applicants need in order to be certified; expedited service procedures; fair hearings; rights to out-of-office interview; how to file a complaint; the location and hours of issuance offices, or a telephone number where this information can be obtained. The Act requires that low-income households be informed of the documentation required for certification. The other items were added because participants may otherwise never learn of these special provisions or have difficulty in locating the nearest issuance facility. This is not to say that all materials must have all of the mandated contents, but certainly any basic informational brochure should contain most of them. For example, a separate fact sheet could be prepared that lists the locations and hours of issuance offices.

Two comments were received indicating that the inclusion of a list of certification offices in printed material was not feasible in some States. The Department's intention was for this information to be available in materials distributed by local agencies indicating where within the project area applications may be filed. Materials designed for Statewide distribution may indicate that this information may be obtained through the hotline.

Five commenters asked that we make it very clear that other non-State agency organizations must be informed of the availability of informational materials so that they know to request them. Believing this to be a valid point, the Department added language to final regulations that requires State agencies to actually offer materials to other agencies rather than "endeavor to make available." In addition, language has been included to indicate that requests for reasonable quantities of materials be met. This was in response to several comments from other agencies who have had difficulty in obtaining more than one copy of a pamphlet or application at a time and from two administering agencies who need this clarified for printing requisitions.

Further, reference to minority groups/grass roots organizations has been included among the list of offices, organizations and groups to receive printed materials. Although these groups were not specifically mentioned in the proposed April 10 rulemaking, the Department felt that reference to contact with other agencies and organizations working with low-income people would include these groups. As questions have been raised on this issue by several sources, minority groups/grass roots organizations shall also be routinely mailed materials advising them of the availability of the Program to all persons and latest Program changes. An updated directory of minority groups/grass roots organizations is currently being developed by the Office of Equal Opportunity. A directory will be available to all State agencies upon publication.

Thirteen administering agencies indicated that the withdrawal of FNS support in the printing of materials places an undue burden on State agencies. The Department has never intended that FNS publications be the sole source of available food stamp literature, but rather for them to supplement State agency publications. State agencies have steadily increased their reliance on FNS publications to a point where their demand exceeds the Department's ability to provide bulk supplies. Budget allocations limit the amount the Department may spend on food stamp literature. However, the Department recognizes that new outreach regulations increase the need for literature. Therefore, the Department has reassessed its position and for Fiscal Years 1979 and 1980 is willing to provide bulk supplies of FNS printed materials to States to fill most of their needs. However, there is no guarantee that the materials provided will be enough. Due to budget limitations, States may have to supplement printing to meet their total need. In the event of policy changes, the Department will print an initial bulk supply of material to reflect the change but once the initial supply has been exhausted, States are responsible for reprinting to supplement their need.

Further, FNS has modified the final rule to allow State agencies to fulfill the requirements for printed materials by using materials provided by FNS, as long as these are stamped with the name and address of the State agency and the State hotline number.

The provisions for distribution of nutrition materials prompted comments from only eight agencies. Most of the comments suggested minor language changes. Six of the agencies requested an expansion in the requirements for nutrition education. The Act requires that nutrition pamphlets be made available and that nutrition posters be prominently displayed, and these requirements have been included in the final regulations. However, this does not preclude a State agency from taking a more active approach.

Twenty-seven comments were received concerning the provisions for media contacts, 23 of which made suggestions for making the regulations more specific in terms of types of contact, requirements for media specialists and production of television public service spots. Eight commenters also requested a definition of "regular" contact. The Department feels that State agencies need some flexibility in this area. To require States to contact the media once a month will almost certainly result in monthly press releases of little or no value that will not be picked up by the newspaper or radio stations. However, the Department expects such contact to take place more frequently than semi-annual reports of changes in income deductions and coupon allotments. The contact shall be as often as necessary to provide interesting and meaningful information

and stories to the public. Final regulations retain the flexibility of the proposal. The frequency and method of media contact will depend on the conditions of the individual States.

The proposal for special efforts drew approximately 65 comments, many of which indicated a desire for further clarification. The very nature of the special efforts provision requires a certain amount of State agency flexibility for it to be effective. The special projects undertaken will depend on the target groups and areas selected and on the reasons perceived by the State for the low participation rates. It is clear that many States do not have the capability for obtaining a precise, statistically valid assessment of geographical areas and target groups that have comparatively low participation rates. General knowledge of the areas within the State, discussions with other agencies dealing with low-income households, information gathered through the evaluation process, data collected from hotline records, etc., may all be used to evaluate where special efforts should be directed. In lieu of exact data, State agencies must use whatever means are available to them to make a judgment regarding the groups and areas in need of special efforts.

The section concerning the direct distribution of literature to unemployment compensation recipients received a great deal of criticism from State agencies. This provision as proposed would have required States to arrange with unemployment offices for the handing out of food stamp literature or the semi-annual mailing of literature to unemployment compensation recipients. Fifteen State agencies, one local agency and three FNS regional offices urged that this requirement be eliminated or altered, primarily because a State agency's ability to comply depends on the cooperation of an agency having no obligation to do so. Should an unemployment office be unable to cooperate, the State welfare agency would be unable to comply with Federal regulations through no fault of its own. The Department has no desire to place such an unintended burden on State agencies. However, the Food Stamp Act of 1977 requires the State agency to "inform low-income households about the availability, eligibility requirements, and benefits of the food stamp program, including, but not limited to, notification to recipients of Aid to Families of Dependent Children, Supplemental Security Income, and Unemployment Compensation. . ." (Sec. 11(e)). The word "notification" indicates a more active process than simply leaving stacks of literature at those offices. Therefore, the State agency has the responsibility to approach the Unemployment Insurance Offices to arrange for direct distribution of outreach material to recipients of unemployment compensation through direct contact or direct mailing. The Department realizes that there may be difficulty in obtaining a mailing list from the Unemployment Insurance Office because a list may not be available or because release of such a list may be in violation of State law. Also, the Unemployment Insurance Office may not be able to cooperate due to shortage of funds or limited staff. Only as a last resort, should State agencies resort to merely supplying Unemployment Insurance Offices with material for display at the location for pick up by unemployment compensation applicants and recipients. Although the Department recognizes the limitations, the State agency must make every effort to enlist cooperation from Unemployment Insurance Offices and to arrange for the direct distribution of outreach materials to unemployment compensation recipients.

Therefore, the Department has modified the language of this section to require State agencies to actively attempt to arrange for the direct distribution of material to unemployment compensation recipients. Furthermore, the Department has obtained the Department of Labor's support for this provision. Their national headquarters has agreed to encourage local unemployment offices to cooperate with local food stamp agencies in the direct distribution provisions.

Nineteen comments were received on the section pertaining to cooperation with Community Food and Nutrition Program (CFNP) grantees that requested FNS to mandate cooperation with any group that has received funding for working with low-income or food stamp households. The department's primary reasons for including this provision were to avoid the duplication of effort with which Congress was concerned and to make federally-funded outreach being performed by State agencies and CFNP grantees as efficient and effective as possible. Cooperation with other organizations that work with low-income households and perform food stamp outreach is, of course, desirable and is encouraged by the Department.

The provision for identifying and removing participation barriers elicited 58 comments, nearly half of which were highly favorable. Twelve comments asked for clarification of the mechanism to be used by State agencies for identification and removal of barriers—what administrative units are involved, how they work together and sources of information to be utilized. Given the unique status of each State and the variety of administrative structures involved, the Department believes this is an area where State agency flexibility is necessary. There are many sources that may be used for identifying barriers. They include hotline records, complaint records, discussions with advocacy groups, Performance Reporting review records, etc. It should be noted that this is not solely an outreach function. Other units must be involved in this process as well, each sharing information with the other. The mechanism for accomplishing this requirement will be left to each State agency's discretion.

There were several suggestions for deletions and additions to the list of barriers to be identified. The existence of negative community attitude was eliminated from the list because, after reviewing the comments on this subject, the Department became convinced that identifying and correcting this problem would be exceedingly difficult, if not impossible. The item dealing with the racial/ethnic composition of certification staff was also eliminated in response to comments that States are bound by their Merit Personnel Systems and that racial/ethnic staff composition could not be changed on the basis of outreach regulations. The Department has retained, however, the provision that outreach staff be recruited from groups that are targeted for outreach whenever possible and within the confines of their Merit System requirements. A clarification was made to the proposed factor of accessibility and timeliness of certification and issuances to specify the degree to which there is compliance with the processing standards for certification and delivery of benefits in § 273.2 (g) and (i).

Five agencies opposed the hotline requirement in the proposed rules. The Department believes that food stamp hotlines are important to program accessibility. A hotline provides a simple and effective system for potential eligibles to obtain information on the benefits and eligibility requirements of the program and on how and where to apply. It also provides ready access to someone who can help resolve problems encountered at local offices. Further, a hotline system can be a useful monitoring tool for determining program violations and barriers to participation.

The final rule continues the requirement that each State agency operate at least one hotline. However,

the Department has determined States may be exempted from this requirement if they can document that use of the hotline is minimal and that full time staff is not warranted. In addition to providing figures on number of calls and the cost of operation, State agencies requesting exemptions must also prove that the hotline service was adequately publicized. States which have been granted an exemption to the toll-free hotline requirement must provide an alternative system. The State may, with FNS approval, substitute a machine answering service where calls would be recorded and promptly returned by someone knowledgeable of program policy and procedures. This alternative system must provide the same quality of service as is required for hotline operations.

Proposed regulations mandated that "hotlines shall be called 'Food Stamp Hotlines' and shall be listed as such with local telephone companies. State agencies shall ensure that the hotline numbers are available through the directory assistance services in their States." The two State agencies commenting on this provision pointed out that a requirement for listings in every local directory would be quite costly and difficult to arrange. The Department has determined that, since local food stamp offices are listed in local directories, an additional listing there for the hotline would be unnecessary. However, the number must be listed with toll-free directory assistance (800–555–1212) and with the listing for the city or town where the central State offices are located. In most cases this will be the State capitol.

Some States, however, locate most of their offices in another city. Maryland, for example, houses its State food stamp office in Baltimore rather than Annapolis, its State capital. The Department's intention here is that the number be listed where most people know or would assume the State office to be located. Listings in every local directory are not necessary. They are, of course, encouraged.

In response to several comments, additional language was included in final regulations that addresses the special circumstances of those States that tie the food stamp hotline to an existing multi-program hotline service. In such systems all operators may not be completely knowledgeable of program rules and procedures but can transfer the caller to someone who is. The Department finds this system acceptable as long as the call can be transferred to or promptly returned by someone knowledgeable of program rules and procedures.

Also, in response to comments, language was added to prohibit operators from making absolute statements about the caller's eligibility or ineligibility.

Eleven comments requested that final regulations contain a requirement for bilingual hotline service. The Department has determined that, since the regulations allow for inclusion of hotline service with existing multi-program hotlines, that bilingual service could not be mandated. Further, it would be difficult to determine the need for bilingual operators since hotlines are normally situated at the State office and the applicability of the bilingual requirements is determined at the project area level.

Further, it would be impractical to establish bilingual hotlines as there might be different languages required at different locations in a State, or several languages required in a given project area. However, the Department encourages the use of bilingual operators, particularly in those areas where the bilingual service requirements of § 272.4(c) are in effect.

Nine comments requested further clarification of what constitutes an adequate number of lines. The data currently available to the Department does not allow for a more precise definition of adequate. That there are enough lines so that food stamp callers are not denied telephone access is the objective and this can be determined through periodic monitoring.

Staff

A total of 65 comments were received concerning the proposed staffing standards for outreach. Eleven State agencies objected to the State level standards for additional staff, citing variables within their States that raise questions as to the validity of the standards and of the number of estimated eligibles provided in the April 10 preamble. Thirty-eight comments including two from State agencies and two from local agencies requested more definite requirements for local level coordinators. Six State agencies commented that the 20 percent guideline suggested in the preamble for local coordinators was too much, and four commenters requested that final regulations allow for regional outreach coordinators in sparsely populated areas.

While it is clear that many States require more staff at both the State and local levels to conduct viable outreach programs, it is not clear that the standards outlined in the April 10 proposal are the most appropriate standards to address this need. The Department has withdrawn the requirement for additional State level staff based on the estimate of eligible non-participants. Staffing levels shall instead be tied to the State agency's ability to fulfill the requirements of these regulations. State agencies that comply with the requirements of these regulations should not need to also meet a specific federal standard for additional staff. Therefore, final regulations retain the current requirement for one full-time State coordinator and for one outreach coordinator in each project area. Coordinators shall be given sufficient clerical staff and additional outreach workers shall be employed to assist State and local coordinators as necessary to comply with these regulations and operate an effective outreach program. In small, sparsely populated areas, a regional outreach coordinator may be employed in lieu of several project area coordinators.

The paragraph concerning contracts has been clarified in response to comments. Contracts for conducting outreach, like all other contracts above a certain dollar amount, are subject to FNS approval under the procurement standards in § 277.14.

Monitoring

Thirty-five comments were received concerning the section on monitoring, some merely indicating support or opposition to various provisions. Thirteen of these comments asked for more detail in the requirements for Performance Reporting System monitoring of outreach and for the annual evaluations by outreach officials. Because each State's outreach program must be designed to meet the special needs of the State, the Department has determined that further specificity in final outreach regulations is unwarranted. The annual evaluations will be designed by the State agency and must determine the effectiveness of that State's outreach activities.

Comments from nine administering agencies indicated that the formal participation of organized client groups would hinder the evaluation process. The Department believes that input from cooperating agencies and organized client groups can be a valuable tool in assessing outreach needs and effectiveness. Such groups often provide a perspective not readily available to State level staff. The level of participation by these groups may be determined by the State agency ranging from including client/advocate representatives on an evaluation team

to soliciting and evaluating their comments on the outreach program's effectiveness.

The section on outreach plans drew very little response. Of primary concern was the inclusion of client/advocate input. Proposed regulations contained no requirement for public/advocate comment on plans. Comments from 19 agencies, however, raised this issue (13 supporting, 6 opposing). Proposed regulations that will be issued in the near future concerning State Plans of Operation (§ 272.2) will specifically address provisions for public comments on outreach plans. Therefore, although these final outreach regulations do not address this issue, the Department will be proposing in the near future a specific mechanism for public comment on outreach plans.

While solicitation of outside input is not required for the initial outreach plan, the Department encourages State agencies to utilize this potentially valuable means of making their outreach program more responsive to the needs of current and potential participants.

One item was added to the list of required plan contents in response to comments. The Department has determined that a timetable for accomplishing the various elements of the outreach plan is important to the planning process and helpful in monitoring outreach programs. Therefore, State agencies are required to submit a timetable of projected outreach activities with their outreach plans.

Implementation

The preamble to the proposed outreach regulations stated that completed outreach plans would be required by August 15, 1979, to be implemented on October 1, 1979. Due to the delay in publication of this final rule, the Department has decided to require State agencies to submit initial outreach plans to FNS within 60 days of publication of this amendment, to be effective through September 30, 1980. Plans for subsequent fiscal years would be submitted in accordance with rules concerning State Plans of Operation which the Department intends to publish in the near future. So that there will be no lapse in outreach activities prior to the implementation of the final outreach regulations, FNS is extending approval of the current outreach plans for 90 days following publication of these regulations. Thus, State agencies will not have to submit interim plans; however, they will be required to continue the following ongoing activities which are not subject to a specific timetable: Providing written materials to interested persons and groups, using volunteers, and using hotlines. The regulation assures that there will be no interruption of hotline services prior to implementation of the new outreach plans.

Accordingly, Part 272 is amended to read as follows:

1. A new subparagraph is added to § 272.1(g) as follows:

§ 272.1 General Terms and Conditions.

* * * * *

(g) Implementation. * * *

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(10) Amendment 143. Program changes required by amendment 143 to the food stamp regulations shall be implemented as follows:

(i) State agencies shall develop Outreach plans for the period ending September 30, 1980, based on the requirements outlined in § 272.6 and shall submit these plans to the appropriate FNS Regional office within 60 days of publication of this amendment.

(ii) Approval for outreach plans submitted in conformance with former § 272.6(e) is extended for 90 days after publication of this amendment, provided that, as a minimum, State agencies shall continue the activities specified in subparagraphs (1)(ii), (3) and (4) of § 272.6(f) until this amendment is implemented.

(iii) FNS shall provide approval or reasons for disapproval of outreach plans within 30 days of receipt.

2. New paragraphs 272.6 (a), (b), (c), and (d), previously reserved, are added and paragraph 272.6(e) is revised. All read as follows:

§ 272.6 Outreach.

(a) *General purpose.* (1) *Definitions.* "Informational outreach" is the conveying of information about the Program through such means as publications, telephone hotlines, films, media and face-to-face contacts. "Noninformational outreach" is the providing of transportation to certification or issuance offices, or similar physical program support.

(2) State agencies shall design and administer outreach programs that use informational techniques to:

(i) inform low income households about the application process and availability and benefits of the Program;

(ii) enlist the cooperation of other agencies and organizations in disseminating program information and facilitating the participation of eligible households;

(iii) determine reasons for nonparticipation; and

(iv) assist in formulating and implementing actions to remove barriers to participation.

(3) State agencies may use noninformational techniques to conduct the activities noted in subparagraphs (i) through (iv) above. However, FNS shall not reimburse State agencies for any portion of their expenditures made for noninformational outreach services that duplicate noninformational services provided in the same area by federally funded community action agencies (CAA's).

(4) There are many factors that State agencies must take into consideration when designing outreach programs. Some of these factors, such as the rural-urban composition of a State, the available media resources and the size of the low-income population, can vary widely from one State to another. Thus, outreach programs must be specifically designed to address the circumstances in each State. Certain basic techniques and activities, however, shall be incorporated into each program. The following minimum requirements define these common elements. State officials shall ensure that the outreach activities described in the minimum requirements are incorporated into their outreach efforts. However, outreach efforts should not be limited to these activities when additional activities would be useful. State agencies are to regard the minimum requirements as a foundation for outreach programs designed to meet special circumstances within the State.

(b) *Minimum requirements.* (1) *Volunteers.* (i) *Definition.* A volunteer is any person who, either under the direction of the State agency or in the course of his/her duties under the direction of a cooperating agency, performs informational or non-informational food stamp outreach activities without pay from the State agency. (ii) State agencies shall actively attempt to recruit volunteers to assist outreach staff in achieving the outreach program's objectives. Volunteers shall be sought from other government agencies, private agencies, organizations, groups, and from the public. State agencies shall work to enlist the assistance of State and local health departments; local agencies that administer general assistance programs; social services agencies; the Social Security Administration; the Bureau of Indian Affairs; agencies administering the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP); the Extension Service, especially where the Expanded Food and Nutrition Education Program

(EFNEP) is in operation; the State Employment Service; State agencies administering Unemployment Insurance programs; vocation and rehabilitation agencies; Indian tribal organizations; community action agencies; senior citizens' organizations; churches and religious organizations; legal aid organizations; migrant service organizations; retailers authorized to redeem food stamps; and other agencies and organizations working with low-income people. In addition to these groups, State agencies should contact any other agency, organization, or group which might be willing to assist in the outreach effort.

(iii) In planning volunteer recruitment efforts State agencies shall determine where prospective volunteers would be most useful in the outreach effort. Volunteers may, among other activities, participate in the State agencies' referral systems; distribute informational materials; act as authorized representatives; provide transportation to and from certification and issuance offices; assist households in completing applications; accompany households to interviews; act as language interpreters; assist the certification staff in prescreening applications; and display posters describing the Food Stamp Program. In order to ensure that volunteers are used as effectively as possible, State agencies shall provide them with appropriate training in food stamp policy and procedures.

(iv) The initial contact that State agencies make to enlist the assistance of groups, agencies and organizations shall be made in person whenever possible. Where an initial contact cannot be made in person it shall be made in writing and followed by a telephone call or a personal visit. At the time the initial contact is made or shortly afterward, the State agency shall provide the group contacted, or its representative, with information about the Food Stamp Program, the outreach program and the role envisioned for prospective volunteers. When individuals or groups agree to participate in a State agency's outreach efforts, the State agency shall act promptly to incorporate their aid into the overall outreach program.

(2) *Referrals.* The establishment and operation of a referral system may be the most important element of a State agency's outreach effort. State agencies shall emphasize the use of referrals in the design of outreach programs.

(i) State agencies shall establish referral systems through which people who are potentially eligible for participation in the Food Stamp Program are orally informed of the Program's availability and directed to an office where they can file an application. Referral systems shall include all local public assistance (PA) offices and offices of State agency administered general assistance (GA) programs. Applications for food stamp benefits shall be readily available at these offices. Applicants for PA or State agency administered GA benefits who are not processed for food stamp benefits as provided for in § 273.2(j) shall be given applications for food stamp benefits and directed to the local food stamp office for further processing. State agencies shall take appropriate steps to contact and incorporate other agencies and organizations into the referral systems. These organizations and agencies shall include, but not be limited to, the Social Security Administration; the State agencies responsible for administering workmen's compensation programs, the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP); Veterans Administration offices; the Extension Service, especially where EFNEP is in operation; local agencies administering general assistance programs; agencies administering Medicaid; the Bureau of Indian Affairs; the State Employment Service; churches; agencies administering programs under Title III of the Older Americans' Act and other programs serving the elderly; agencies and organizations administering emergency assistance programs; community action agencies; social service agencies; housing authorities; senior citizens' organizations; legal aid organizations and other organizations and agencies working with low-income people. When contacting agencies, groups and organizations to enlist them into the referral system, State agencies shall follow the procedures in paragraph (b)(1)(iv) of this section. State agencies shall offer training in basic eligibility requirements, benefits, and application procedures to agencies participating in the referral process and shall provide such training upon request.

(ii) State agencies shall arrange a referral service with agencies administering the WIC and Commodity Supplemental Food Programs through which food stamp applicants who appear eligible for benefits from these programs are orally referred to local WIC and Commodity Supplemental Food Program offices. Printed materials, such as posters, fliers, and pamphlets, that explain the WIC and Commodity Supplemental Food Programs shall be made available at local food stamp offices. These printed materials shall be supplied by agencies administering the WIC and Commodity Supplemental Food Programs. Applicants and recipients who are pregnant, who have children under five years of age (or under six years of age for the Commodity Supplemental Food Program), or who express interest in these programs shall be referred to local offices that administer these programs. This referral service shall be operated in all areas where the WIC Program or Commodity Supplemental Food Program is in operation. A referral service shall also be established so that any food stamp applicant who is 65 years of age or older, blind, or disabled, and who is not receiving Supplemental Security Income (SSI), is referred to the local Social Security office for more information about SSI benefits.

(3) *Printed materials.* (i) State agencies shall make available printed materials such as pamphlets, fliers and posters that contain current basic information about the following items: eligibility requirements and program benefits; application procedures including how to obtain and file applications; the documentation required for completing applications; the applicants' rights to receive applications when they are requested, file applications the day they are received, and receive coupons (if determined to be eligible) within 30 days of filing applications; expedited service; fair hearings; out-of-office interview provisions; procedures for filing a complaint, the locations and hours of operation of certification and issuance offices, and the food stamp hotline numbers. State agencies may provide a telephone number (the hotline or other numbers) where information on filing complaints and the location and hours of services may be obtained in lieu of providing this information in printed form. This material shall be in languages other than English as required in § 272.4(c) and shall include a statement that the Program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin, or political beliefs. State agencies may use materials provided by FNS to comply with this requirement, provided that, as a minimum, the materials display the State agency's name and address, the State's hotline number, and a telephone number where information on filing complaints and the location and hours of certification and issuance services may be obtained, if this information cannot be provided through the food stamp hotline.

(ii) State agencies shall make these printed materials, as well as application

forms, available at local food stamp and welfare offices and at offices of State agency administered general assistance programs. In addition, State agencies shall offer and provide upon request these materials and applications to Employment Service Offices, Unemployment Insurance offices, State Offices of Economic Security, Social Security offices, general assistance offices administered either locally or by the Bureau of Indian Affairs, WIC clinics and CSFP offices, churches, senior citizens' centers, minority groups/grass roots organizations and other Federal, State and local agencies that have contacts with low-income people for display and distribution to applicants of these other programs. State agencies shall also make reasonable quantities of applications and printed materials available to any organization upon request.

(iii) FNS will supply State agencies with posters and pamphlets containing information regarding foods containing substantial amounts of the recommended daily allowances of protein, minerals and vitamins; menus making use of these foods; the relationship between health and diet; and posters and make the pamphlets available at all food stamp and public assistance offices. Applicants shall be informed of the availability of these materials at the time of initial application and recertification.

(4) *Media contacts.* State agencies shall contact the news media on a regular basis to provide current information on the Program, including announcements regarding the semi-annual and annual changes in allotments and eligibility standards. State agencies shall seek the cooperation of the media, including foreign language media and daily and weekly newspapers, in disseminating information about the Program through public service announcements, press releases and human interest stories.

(5) *Special efforts.* (i) State agencies shall develop and conduct special outreach efforts designed to reach specific groups of low-income people. At a minimum these efforts shall be directed toward participants in AFDC, SSI, general assistance and unemployment compensation programs who are eligible for food stamp benefits but who are not participating in the Program; toward applicants for HUD Section 8 housing assistance; toward Indians living on reservations where the State agency is running the Program on the reservation; and toward migrant households that periodically reside in a State. In addition, State agencies shall monitor participation rates and direct special outreach efforts toward groups that have comparatively low rates of participation. These groups may include the elderly, disabled, various ethnic groups, minorities, and the working poor.

(ii) State agencies shall develop and conduct special outreach efforts directed toward low-income residents of specific geographic areas such as all or parts of cities, counties or regions of the State. These areas shall be identified through the analysis of the participation data of areas in each State. Annually, State agencies shall target at least two areas with comparatively low rates of participation or high numbers of eligible nonparticipants for special efforts.

(iii) In addition to the special efforts described in paragraphs (i) and (ii) above, State agencies shall endeavor to arrange for the direct distribution of outreach materials to participants in other assistance programs.

(A) State agencies shall actively attempt to arrange with the State agencies administering unemployment compensation programs for the direct distribution of food stamp outreach material to recipients of unemployment compensation. This direct distribution shall be the handing out of food stamp information, on an individual basis, to each person who applies for unemployment benefits at an unemployment office. When a direct method of distribution such as this cannot be arranged, State agencies shall actively attempt to arrange for semi-annual mailings of food stamp outreach materials to unemployment compensation recipients. At a minimum, food stamp informational materials shall be available at unemployment offices.

(B) State agencies shall also endeavor to arrange for the direct distribution of food stamp outreach materials to participants in other programs, including but not limited to recipients of public assistance, general assistance and SSI benefits; participants in the WIC and Commodity Supplemental Food Programs and HUD Section 8 applicants.

When making arrangements, priority shall be given to distributing the materials on an individual basis, at the offices of the programs. Where that type of distribution cannot be arranged, the possibility of periodically mailing the materials shall be pursued.

(6) *Cooperation with Community Food and Nutrition Program (CFNP) grantees.* State agencies shall identify those CFNP grantees that are receiving grants for the purpose of conducting food stamp outreach. When practicable, State agencies shall coordinate with State Departments of Economic Opportunity, or directly with local grantees, as the grantees are planning their activities. This will enable State agencies to anticipate and coordinate the total outreach effort between their own employees or volunteers and those of the CFNP grantees. In areas where federally funded CAA's are conducting noninformational outreach activities, FNS will not reimburse State agencies for expenditures for noninformational outreach activities that duplicate those of the CAA. However, State agencies shall offer training and outreach materials to those CAA's and any other CFNP grantees and shall, where possible, integrate the efforts of these agencies into the overall outreach effort. A CAA and a State agency may both provide informational outreach in the same project area. Where this occurs, the efforts of both agencies should be coordinated to the maximum extent possible in order to heighten the effectiveness of the activities.

(7) *Removing participation barriers.* The State agency shall identify factors which inhibit participation of eligible households in the program and develop appropriate corrective action to remove these barriers. When a State agency determines that participation is being inhibited and that some corrective action is required, the procedures required in Part 275, the Performance Reporting System, shall be followed. Factors that may influence participation and which shall be reviewed periodically include, but are not limited to, the following items:

(i) degree to which eligible households are provided an opportunity to participate in conformance with the processing standards in § 273.2 (g) and (i).

(ii) degree to which out-of-office certification procedures and mail issuance are used;

(iii) availability and simplicity of application forms;

(iv) availability of bilingual workers or volunteers and printed materials in languages other than English;

(v) Scope and effectiveness of the referral network;

(vi) effectiveness of printed materials and media contacts.

(8) *Hotlines.* State agencies shall operate toll free telephone hotline services at the State level that can be used by participants and potential participants to secure program information and application forms, lodge complaints and generally facilitate their participation in the Program. The Alaska State agency is exempt from the requirement for maintaining a toll free hotline at the State level. The Alaska State agency shall, however, provide an

alternative means for participants and potential participants to secure program information and applications, lodge complaints and make inquires. The alternate procedures are subject to FNS approval through the Outreach Plan submitted in accord with paragraph (e) of this section. Other State agencies that can demonstrate conclusively that the number of calls received on the food stamp hotline does not justify the expense of its operation may be granted an exemption by FNS from this requirement. State agencies requesting exemptions shall provide documented evidence of justification to FNS, including the average number of calls per month, the cost of hotline equipment, service, and staff; and efforts to publicize the availability of hotline service. States, with FNS approval, may substitute a machine answering service or other cost effective system where calls can be recorded and promptly returned by someone knowledgeable in Program policy and procedures. The quality of this alternative system shall meet the hotline standards outlined in this paragraph.

(i) The hotline service shall be available during all normal business hours. The hotlines shall be called "Food Stamp Hotlines" and shall be listed as such in the telephone listings for the city or town where the central State offices are located. State agencies shall ensure that the hotline numbers are available through the toll-free directory assistance services in their States and through directory assistance for the city or town where the central State offices are located.

(ii) The hotline service shall be staffed during all normal business hours with State agency employees or volunteers. Unless approved by FNS, telephone answering devices shall not be substituted for hotline operators during business hours. All food stamp hotline operators must be knowledgeable in Program rules and State agency procedures so that accurate information is disseminated, households are referred to the proper offices for further information or services, and complaints are turned over to the proper officials for resolution. If the food stamp hotline is incorporated into a multi-program hotline service, operators must have the capability to connect the caller with someone knowledgeable in program rules and procedures. Hotline operators shall not make absolute statements, about the callers eligibility or ineligibility. Records shall be maintained on the number of calls and the nature of the inquiries and complaints. The hotline number shall be posted in local welfare offices and included on the printed materials as required in § 272.6(b)(3).

(iii) State agencies shall determine the appropriate number of telephone lines, provided there is at least one, which shall be adequate to handle the number of callers. The initial determination shall be based on prior experience with hotline services, such as the hotline service operated during the transition from the old program rules to the new program rules. Adjustments in the number of telephone lines shall be made if it is determined through monitoring that there are too many or too few lines in operation. State food stamp hotlines may also serve other programs or be incorporated into existing multi-program hotline systems, but there must be enough lines so that food stamp callers are not denied telephone access. Local areas may operate hotlines and, in areas with large numbers of low-income households, are encouraged to do so.

(c) *Staff.* State agencies shall comply with the following minimum requirements for staffing their outreach programs.

(1) *State level.* (i) Each State agency shall employ one full time food stamp outreach coordinator who shall be responsible for ensuring that the State agency's outreach program is operated in compliance with these regulations. The outreach coordinator shall be given sufficient clerical support to carry out these duties. In addition, other outreach workers shall be employed to assist the State coordinator as necessary to operate the State agency's outreach program effectively and in accordance with the requirements of these regulations. Whenever possible, State agencies shall recruit their outreach workers from groups that are targeted for outreach efforts.

(ii) The State level outreach staff shall have the primary responsibility for planning and operating the State agency's outreach program. Their duties shall include, but are not limited to, the following activities:

(A) developing and implementing annual State agency outreach plans;

(B) monitoring and assessing the effectiveness of State and local outreach efforts, including organizing and conducting the annual outreach evaluations;

(C) providing technical assistance to outreach personnel at the local level;

(D) enlisting the support and assistance of agencies, groups and organizations such as the Social Security Administration, State Employment Service and State health departments, in the State agency's outreach efforts and ensuring that they receive necessary training;

(E) designing and administering the State agency's referral system;

(F) overseeing the operation of the State agency's food stamp hotline;

(G) coordinating activities with other groups that perform food stamp outreach;

(H) developing, or obtaining from FNS, the outreach printed materials and ensuring that adequate supplies are maintained and distributed in accordance with the provisions of these Outreach regulations;

(I) establishing and utilizing media contacts; and

(J) identifying barriers to participation and helping to formulate corrective action.

(2) *Local level.* (i) A food stamp outreach coordinator shall be employed in each project area. Local coordinators shall spend sufficient time to accomplish the activities specified in the outreach plan and their other duties shall be reduced proportionately. Local coordinators shall be provided sufficient clerical staff to carry out outreach duties. Additional outreach staff shall be assigned to the local coordinator as necessary to conduct the required outreach activities. Whenever possible, the staff performing outreach at the local level shall be recruited from the groups targeted for the outreach. State agencies, with FNS approval, may provide for regional food stamp outreach coordinators, in small, sparsely populated geographic areas of the State.

(ii) It is the responsibility of local level outreach staff to carry out outreach activities in each project area. Their duties include, but are not limited to:

(A) providing the State outreach coordinator with information as requested;

(B) enlisting local individuals, groups, agencies and organizations to assist in the outreach effort and ensuring that they receive necessary training;

(C) establishing and utilizing media contacts;

(D) distributing printed materials provided by State level outreach staff;

(E) identifying barriers to participation, and helping to formulate corrective action;

(F) coordinating activities with other groups, agencies or organizations performing food stamp outreach in the project area; and

(G) operating the referral system and extending it to include as many organizations and agencies as possible.

(3) *Contracts.* The activities in paragraph (b) of this section (Minimum Requirements) and any similar activities may be performed by agencies and

organizations that are under contract with the State agency. The monitoring and planning activities specified in paragraphs (d) and (e) of this section shall not be performed by organizations and agencies outside the State agency. The contracting of outreach activities to other organizations and groups shall not relieve the State agency of the responsibility for adhering to the outreach staffing levels specified in this paragraph, and shall be subject to FNS approval under the procurement standards in § 277.14.

(d) *Monitoring.* State agencies shall develop a system for monitoring and evaluating State and local level outreach activities. The monitoring system shall provide the State agency with information regarding compliance with the State Outreach Plan and the effectiveness of outreach activities. State agencies shall include information gathered through the Performance Reporting System, Monthly Reports of Participation and Coupon Issuance, project area outreach reports, and formal outreach evaluations in this monitoring system.

(1) *Performance Reporting System.* State agencies shall monitor the efficiency and effectiveness of outreach programs through the Performance Reporting System as required by Part 275. The State outreach coordinator and outreach staff are encouraged to participate in the regular project area reviews. Outreach deficiencies noted in these reviews shall be brought to the attention of the State outreach coordinator for analysis and corrective action. As part of the annual State assessment required in Part 275, FNS will conduct a review of the efficiency and effectiveness of the State agency's outreach program.

(2) *Project Area Reports.* In order to assist the State outreach coordinator in monitoring local outreach efforts and in planning future outreach activities, the State agency shall require periodic, but no less often than quarterly, reports from project areas. These reports will supplement information gained from onsite reviews. State agencies shall tailor the reports so that they provide information that will demonstrate whether the local project areas are complying with the State Outreach Plan.

(3) *Evaluations.* State agency outreach officials shall conduct formal evaluations of outreach activities at least annually. These evaluations shall be aimed at assessing the effectiveness of the various outreach activities that were undertaken by the State and local agencies. State officials shall analyze why some activities have proven effective while others have not and shall initiate appropriate improvements. Participation in the evaluations shall not be limited to State agency staff. Representatives of organizations and agencies that participate in the State agencies' outreach programs, as well as representatives of organized client and advocacy groups, shall be invited to participate in the evaluation process. The results of the evaluations shall be used to make adjustments in ongoing activities (such as providing additional training to some volunteers) and to plan activities for the next year's outreach program.

(e) *Outreach Planning.* (1) *Process.* Annually, State agencies shall plan their outreach activities for the upcoming year. The Outreach Plans that are developed shall be based partly upon assessments and analyses of information collected from various sources. These sources include, but are not limited to: the periodic project area outreach reports and formal outreach evaluations required by paragraph (d) of this section; records of inquiries received by the hotline service required by paragraph (b) of this section; records of complaints kept in accordance with the provisions of § 271.6; the needs assessments and service plans required by § 272.5; the FNS–256 Monthly Report of Participation and Coupon Issuance required by § 274.8(a); the nondiscrimination reports required by § 272.7(h); the estimate of potentially eligible households; the project area reviews and corrective action plans required by Part 275; the data on non-English speaking people collected in accordance with § 272.4; and records kept on the effectiveness of the past years' outreach activities including records from past years' evaluations.

In addition, State agencies shall plan their outreach activities so that the minimum requirements in paragraph (b) are met.

(2) *Submission.* State agencies shall submit their annual Outreach Plans to the appropriate FNS Regional Office for approval, in accordance with the provisions in § 272.2(e).

(3) *Content.* Each Outreach plan shall contain the following information:

(i) a summary of the outreach staff the State agency plans to use, including:

(A) number of State and local level outreach staff (administrative and clerical) and the percent of time each will spend on outreach activities;

(B) number of State level outreach staff working outside the State office and where they are located;

(ii) copies of all required printed materials;

(iii) a decription of the methods that will be used to recruit volunteers;

(iv) a summary of the kinds of agencies, organizations, and groups that will be asked to aid in outreach along with descriptions of the services they will be asked to perform;

(v) a list of agencies that have agreed to provide referral services;

(vi) a description of the referral arrangements made both to refer food stamp applicants and recipients to the Special Supplemental Food Program for Women, Infants, and Children and the Commodity Supplemental Food Program, and to the Supplemental Security Income Program, and to attempt to have applicants or participants in these programs referred to the food stamp program;

(vii) a description of the arrangements made to notify recipients of unemployment compensation of their potential eligibility for food stamps;

(viii) the geographic areas in a State that have been selected to receive special outreach efforts in the coming year and a description of what the special efforts will be;

(ix) a list of target groups that have been selected to receive special outreach efforts and a description of what the special efforts will be;

(x) a description of the State agency hotline operation, including the services and staff provided, the number of lines being used, and any local hotlines that are being operated;

(xi) an analysis of those aspects of program operations that appeared to hinder the participation of eligible households and a description of planned corrective action;

(xii) a description of the methods that the State agency will use in planning and monitoring efforts at the local level, including reports that will be required;

(xiii) a timetable for accomplishing the activities outlined in the outreach plan;

(xiv) any other pertinent information that is necessary to provide FNS with a complete picture of the State's outreach efforts, includig special instructions.

(4) *Approval.* FNS shall provide approval or the reasons for disapproval within 30 days of receipt of the Outreach Plan from the State Agency. Those plans that have not been responded to within 30 days shall be considered to have been approved. FSN may approve portions of a State agency's Outreach Plan. If this occurs, State agencies shall implement the approved portions and revise and resubmit the unapproved portions.

(91 Stat. 958 (7 U.S.C. 2011–2027))

Statement

This final rule has been reviewed under USDA criteria established to

implement Executive Order 12044. "Improving Government Regulations," and has been classified "significant." An Approved Final Impact Statement is available from Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: October 31, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79-34406 Filed 11-5-79; 8:45 am]

BILLING CODE 3410-30-M

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Federal Register

Vol. 44, No. 216

Tuesday, November 6, 1979

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

List of Public Laws

Last Listing November, 5, 1979

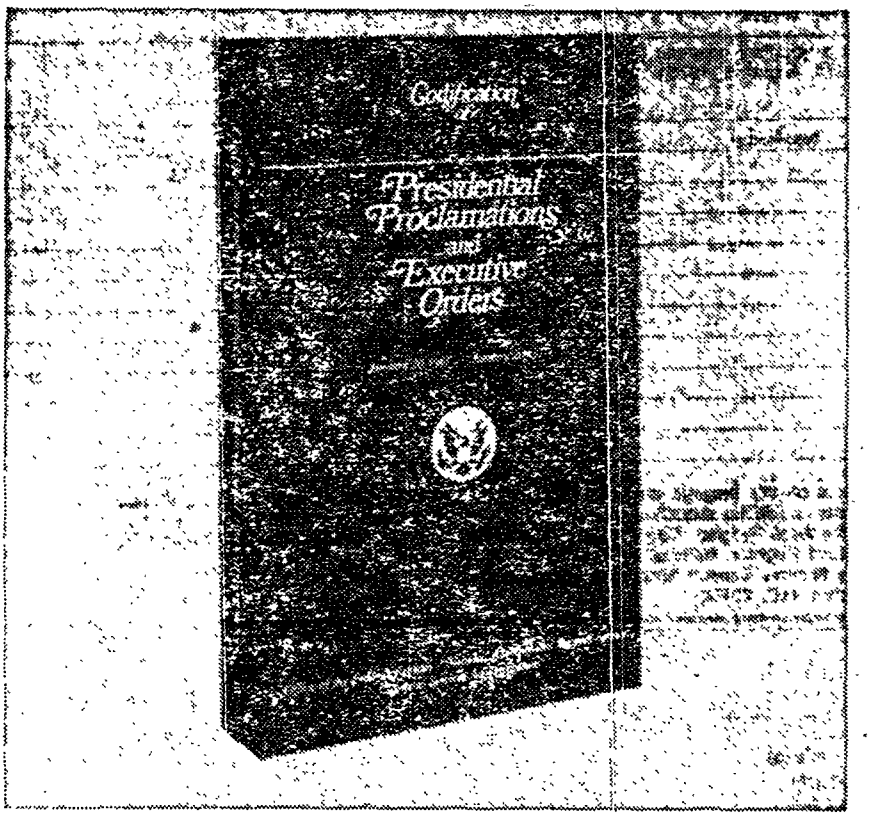
This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 3923 / Pub. L. 96-98 To amend chapter 25 of title 44, United States Code, to extend for one year the authorization of appropriations for the National Historical Publications and Records Commission, and for other purposes. (Nov. 1, 1979; 93 Stat. 731) Price $.75.

H.J. Res. 3 / Pub. L. 96-99 Designating November 4, 1979, as "Will Rogers Day". (Nov. 2, 1979; 93 Stat. 732) Price $.75.

S. 975 / Pub. L. 96-100 "Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1980". (Nov. 2, 1979; 93 Stat. 733) Price $.75.

NEW PUBLICATION NOW AVAILABLE



For those of you who must keep informed about Presidential proclamations and Executive orders, there is now a convenient reference source that will make researching certain of these documents much easier.

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